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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

~~No. 607~~ 7

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

~~No. 608~~ 8

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

~~No. 609~~ 9

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

~~No. 610~~ 10

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

~~No. 611~~ 11

HENRY A. PHILLIPS, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

~~No. 612~~ 12

PIEDMONT COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

~~No. 613~~ 13

GREENE COUNTY COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ON PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED JANUARY 31, 1931

CERTIORARI GRANTED MARCH 9, 1931

(35,609, 35,610, 35,611, 35,612, 35,613, 35,614, 35,615)

(35,609, 35,610, 35,611, 35,612, 35,613, 35,614, 35,615)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 687

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

No. 688

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

No. 689

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

No. 690

CUMBERLAND COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

No. 691

HENRY A. PHILLIPS, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

No. 692

PIEDMONT COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

No. 693

GREENE COUNTY COAL COMPANY, PETITIONER,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ON PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

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IN COURT OF COMMON PLEAS OF GREENE COUNTY, JUNE TERM, 1928

No. 221

In the Matter of the Appeal of the CUMBERLAND COAL COMPANY from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Cumberland Township

APPEARANCE DOCKET ENTRIES

And now, May 29, 1928, Petition and Appeal filed and the following:

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed, and the appeal be and it is hereby allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further ordered that notice of this appeal be given [fol. 2 a] to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the Court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

And now, July 14, 1928, Præcipe for Subpœna Duces Tecum filed.

Same day Subpœna Duces Tecum issued.

Issue Docket

Trial List July 23, 1928

And now,July 23, 1928, Motion to quash subpœna filed and the following:

Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open court, after argument and [fol. 3 a] in consideration thereof, it is ordered that the subpœna be quashed.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

An exception is allowed to the appellee to the foregoing order July 23, 1928.

A. H. Sayers. (Seal.)

And now, August 21, 1928, Appellant's Bill of Costs in the sum of $16.60 filed.

And now, Oct. 4, 1928, Præcipe for Subpœna duces tecum filed on behalf of appellant.

Same day Subpœna duces tecum issued.

And now, Oct. 4, 1928, Præcipe for Subpœna duces tecum on part of County of Greene filed.

Same day three Subpœnas duces tecum issued.

Trial List Oct. 15, 1929

And now, Oct. 15, 1928, Motion to consolidate filed.

And now, Oct. 15, 1928, the following cases were consolidated in open court and tried with the within styled case. Nos. 222 to 232 incl. of June Term, 1928 and 7-8-9 of Sept. Term, 1928.

And now, January 29, 1929, testimony filed.

And now, May 6, 1929, requests by appellants for finding of facts and conclusions of law filed.

And now, May 6, 1929, request of appellee for finding of facts and conclusions of law filed.

[fol. 4 a] And now, January 13, 1930, Findings of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928, in this case, is dismissed at the cost of the appellant. The prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, Exceptions to Findings of Fact and Conclusions of Law, filed.

We hereby accept service of a copy of the within excep-

[fol. 5 a] tions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

Argument Calendar, March Term, 1930

And now, March 31, 1930, Opinion and Final order filed.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in

said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and [fol. 6 a] ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Pennsylvania Supreme Court to the Court of Common Pleas of Greene County, filed.

And now, June 13, 1930, Bond with Cumberland Coal Company, as principal, and United States Fidelity and Guaranty Company, as surety, in the sum of One Thousand ($1000.00) Dollars, filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceeding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

Commonwealth of Pennsylvania,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, wherein In the Matter of the Appeal of the Cumberland Coal Company from the Decision of the Board of Comissioners of Greene County Sitting as a Board of Appeal, for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment [fol. 7 a] for the Year 1928, so full and entire as the same remains of record before the said Court, at No. 221 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 1st day of July, A. D. 1930.

Morgan Henderson, Prothonotary. (Seal.)

IN COURT OF COMMON PLEAS OF GREENE COUNTY

PETITION AND APPEAL—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Cumberland Coal Company respectfully represents:

1. Your petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal land situate in the Township of Cumberland in said County, which was assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as a Board of Appeal for the Revision and Equalization of Assessments, and that said Board on or about May 14, 1928, over the objection of your petitioner, adjusted the valua- [fol. 8 a] tion of all the Pittsburgh vein of coal (except what is termed "active coal") in said township at $260.00 per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed "active coal") at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore your petitioner appeals from the action of [fol. 9 a] the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and equitable, having due regard to the valuations and assessments made on other real estate in the County of Greene.

And it will ever pray, etc.

Cumberland Coal Company, by C. L. Albright, Ass't Secretary.

Duly sworn to by C. L. Albright. Jurat omitted in printing.

EXHIBIT "A"

9237 Acres Pittsburgh Coal

[fol. 10 a]

EXHIBIT "B"

9237 Acres Pittsburgh Coal

Valuation $2,401,620.00

IN COURT OF COMMON PLEAS OF GREENE COUNTY

ORDER ALLOWING APPEAL

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it is hereby *is* allowed,

and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

[fol. 11 a] NOTE.—Errors of the stenographer in taking the testimony following seem to be numerous. To a certain extent these errors have been rectified, by agreement of counsel, and it is believed that such as may remain do not affect the issues in these cases.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

Statement of Evidence

Before Hon. A. H. Sayers, Waynesburg, Pa.

Held Monday, October 15th, 1928

Appearances:

C. W. Waychoff, Esq., A. A. Purman, Esq., and Ambrose Bradley, Esq., for the County of Greene.

Reed, Smith, Shaw & McClay and Kyle and Reinhart, Samuel McClay, Esq., Carl Glock, Esq., and William J. Kyle, Esq. for the Appellant.

MOTION TO CONSOLIDATE

By Wm. J. Kyle: To the Honorable A. H. Sayers, President Judge of said Court: The petition of Cumberland Coal Company, H. C. Frick Coke Company, Greene County

Coal Company, Henry A. Phillips, Piedmont Coal Company, Greene Improvement Company, W. A. Seifert, and William J. Kyle, Trustee, by their counsel Reed, Smith, Shaw & McClay and Kyle & Reinhart, respectfully pray the Court that the tax appeals filed by the said Cumberland Coal Company at Nos. 221, 222, 223, 224, and 225, June Term, 1928, from the assessment of its coal lands in Cumberland Township, Carmichaels Borough, Greene Township, Perry Township and Wayne Township; the tax appeal filed by H. C. Frick Coke Company at No. 226, June term, 1928, from the assessment of its coal lands in Greene Township; the appeals filed by the said Greene County [fol. 12 a] Coal Company at Nos. 227 and 231, June term, 1928, from the assessment of its coal lands in Perry Township and Wayne Township; the appeals filed by the said Henry A. Phillips at Nos. 228 and 230, June Term, 1928, from the assessment of his coal lands in Perry Township and Wayne Township; the appeal filed by Piedmont Coal Company at No. 229 June term, 1928, from the assessment of its coal lands in Wayne Township; the appeal filed by Greene Improvement Company at No. 232, June Term, 1928, from the assessment of its coal land in Wayne Township; the appeal filed by W. A. Seifert at No. 8, September term 1928, from the assessment of his coal land in Wayne Township; and the appeal filed by William J. Kyle, Trustee, at No. 9, September term, 1928, from the assessment of his coal land in Wayne Township, be joined for the purpose of trial only, and that they all be heard together by the Court, but that each appeal retain its separate character and require the entry of a separate decree; and further that the Court apply all the evidence taken in the appeals so joined whenever the same may be relevant and material and make separate decrees in each case in accordance therewith.

By Mr. Waychoff: The County of Greene objects to the consolidation as asked for, we do not object to the consolidation of the coal of the appellant, the Cumberland Coal Company, where it is in one contiguous block and only separated by township lines, but we do object to the [fol. 13 a] consolidation where they do not have the same parties, or involve the same subject matter.

By the Court: Sustain the motion, note exception and seal bill for the Appellee.

RUSSELL I. LEMLEY sworn at 10:55 A. M.

Direct examination.

By C. W. Waychoff:

Q. Mr. Lemley where do you live?
A. Waynesburg, Pa.
Q. What is your occupation?
A. Commissioner's Clerk.
Q. You are the Commissioner's Clerk of the Greene County Commissioners?
A. Yes, sir.
Q. As such Commissioners' Clerk do you have in your office, and in your custody, the Assessment Rolls of Greene County?
A. All the records of the Assessors.
Q. Do you have in Court the triennial assessment rolls for Cumberland Township, Greene County, Pa., for 1928?
A. I do.
Q. Turn to the assessment of the Cumberland Coal Company in the Triennial assessment for 1928 in Cumberland Township?

The County of Greene offers in evidence the assessment rolls as produced by the Clerk from the office of the County Commissioners of Greene County, Pa., as approved by the Board of Revision and Appeal for Greene County, for the [fol. 14 a] year 1928, and particularly showing the assessment of the Cumberland Coal Company of tracts of coal, 5523 acres, 256 acres and 3458 acres of the Pittsburgh or River Vein of coal to the total value of $2,401,620.00, as adjusted by the County Commissioners of Greene County, sitting as a board of revision and appeal of Greene County, Pa.

By Mr. Kyle: Appellants do not object to the introduction of the offer, of course, but think the offer coupled with the statement that it is approved by the County Commissioners sitting as a Board of Revision is putting it somewhat out of order, there ought to be some evidence where the actions of the Greene County Commissioners sitting as a Board of Revision and Appeal show that these figures are the result of their deliberation. Mr. Waychoff has offered them as approved and adjusted by them.

By the Court: Over-rule objection, note exception and seal bill for appellant.

By Mr. Waychoff: The County of Greene by its counsel proposes to read that part of the assessment rolls of Greene County showing the assessment of the appellant in Cumberland Township.

Name of taxable, Cumberland Coal Co.; P. O. Address, [fol. 15 a] Pittsburgh, Pa.; Coal, Pittsburgh or River vein; Acres, 5523, Value, $1,435,980.00.

Name of taxable, Cumberland Coal Co.; P. O. Address, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; Acres, 256; Value, $66,560.00.

Name of taxable, Cumberland Coal Co.; P. O. Address, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; Acres, 3458; Value, $899,080.00.

Coal Book page 20 and Coal Book page 24, total adjusted valuation of all property, occupations, etc., $2,401,830.00, and said assessment showing the assessment of six acres of surface at $210.00; the total adjusted valuation of the coal upon which this appeal was taken would therefore be $2,401,620.00.

Mr. Lemley turn to the assessment rolls for the triennial assessment for 1928, of coal lands in Carmichaels Borough, Greene County, Pa., and produce it.

The County of Greene offers in evidence the assessment rolls, as produced by the Clerk of the Greene County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved by the County Commissioners of Greene County, Pa., sitting as a Board of Revision and Appeal for the triennial assessment of the year 1928, and particularly showing the assessment to the Cumberland Coal Company of Pittsburgh, Pa., of 38.9 acres of [fol. 16 a] Pittsburgh or River Vein of coal to the value of $10,114.00, situate in Carmichaels Borough, Greene County, Pa.

By Mr. Kyle: We do not object to the testimony but do object to the form of the offer in which Mr. Waychoff states, as approved by the Board of Revision because there is no evidence of such assessment. We would like to have these offers accompanied by an offer to prove at a later time the approval which you have referred to.

By Mr. Waychoff: We do not agree that is necessary.

By the Court: Overrule the objection, note exception and seal bill for the appellants.

By Mr. Waychoff: The County of Greene offers to read the record as it appears in the assessment rolls of the triennial assessment for 1928, just offered.

Name of taxable, Cumberland Coal Company; coal, Pittsburgh or River Vein; No. of acres 38.9; Valuation $10,114.00. Location of real estate is J. C. Davidson, J. R. Wood, et al. tracts. Total valuations of all properties, occupations, etc., $10,114.00.

Mr. Lemley, will you produce assessment rolls for Greene Township.

[fol. 17 a] Q. I show witness Exhibit No. 3 and ask him what it is?

A. Assessment Book for Greene Township, final assessment for year 1928.

The County of Greene, by its counsel, offers in evidence the assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved by the County Commissioners of Greene County, sitting as a Board of Revision and Appeal for the triennial assessment for the year 1928, and particularly showing the assessment to the Cumberland Coal Company of three tracts of Pittsburgh or River Vein of coal, i. e., 11,642 acres of an assessed valuation of $2,619,-450.00; 62 acres of valuation of $13,950.00; 252.66 acres at a valuation of $56,848.00; showing a total valuation as adjusted and revised by the County Commissioners of Greene County, Pa., sitting as a Board of Revision and Appeal of $2,690,248.00.

By Mr. Kyle: The Appellee objects to the form of the offer for the reasons the offer stating this is the valuation as adjusted and revised by the Board of County Commissioners concerning which there is no proof. The book itself showing there has been a change made without the reason why or under what authority the change was made.

[fol. 18 a] By the Court: Overrule objection for present, note exception and seal bill for Appellant.

By Mr. Waychoff: The County of Greene, by its counsel, offers to read the record of the exhibit as offered.

Name of taxable, Cumberland Coal Company; P. O. Address, Carnegie Building, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; No. of acres, 11,642; valuation, $2,619,-450.00; No. of acres, 62; valuation, $13,950.00; No. of acres 252.66, valuation $56,848.00; location of real estate, coal book at pages 8 and 10, Keener Brothers tract; total adjusted valuation of all property, occupation, etc., $2,690,-248.00; transfer of real estate 252.66 acres from John F. Lantz.

Q. I show witness Exhibit No. 4 and ask him what it is?
A. Triennial assessment roll for Perry Township, for the year 1928.

The County of Greene, by its counsel, offers in evidence the assessment rolls of Perry township, as produced by the Clerk of the Greene County Commissioners of Greene County, Pa., from the office of the Greene County Commissioners of Greene County, Pa., as approved and adjusted by the County Commissioners, sitting as a Board of Revision and Appeal from the triennial assessment for the [fol. 19 a] year 1928, of Perry Township, Greene County, Pa., and particularly showing Exhibit No. 4, being assessment to the Cumberland Coal Company, of Pittsburgh, Pa., of two tracts of Pittsburgh or River Vein of coal, 3123.87 acres of an assessed valuation of $343,530.00 and 3.48 acres of an assessed valuation of $330.00 and showing a total adjusted valuation of $343,860.00.

The County of Greene, by its counsel, offers to read into the record the exhibit just offered.

Name of taxable, Cumberland Coal Company, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; No. of acres, 3123.87; valuation, $343,530.00; 3.48 acres, valuation $330.00; location of real estate, Caleb Davidson tract; total adjusted valuation of all property, occupation, etc., $343,860.00.

Q. I show witness the book containing Exhibit No. 5, and ask him what it is?
A. Assessment rolls of Wayne Township of the final assessment for the year 1928.

The County of Greene, by its counsel, offers in evidence the triennial assessment rolls of 1928 for Wayne Township, Greene County, Pa., as produced by the Clerk of the Greene County Commissioners of Greene County, Pa., from the office of the County Commissioners as approved and adjusted by the County Commissioners of Greene County, sitting as a Board of Revision and Appeal for the triennial [fol. 20 a] assessment for the year 1928, and particularly showing Exhibit No. 5, being the assessment to the Cumberland Coal Company of Pittsburgh, Pa., of certain coal lands of an assessed value of $510,980.00, situate in Wayne Township, Greene County, Pa.

The County of Greene offers to read into the record Exhibit No. 5, just offered.

Name of taxable, Cumberland Coal Company; Post Office Address, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; No. of acres, 6012; valuation of $510,980.00; total adjusted valuation of all property, occupation, etc., $510,980.00.

Q. Will you please turn to the assessment of the Piedmont Coal Company?

The County of Greene, by its counsel, offers in evidence triennial assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved and adjusted by the County Commissioners of Greene County, sitting as a Board of Revision and Appeal for the triennial assessment for the year 1928, for Wayne Township, Greene County, Pa., and particularly showing the assessment to the Piedmont Coal Company of Pittsburgh, Pa., of three certain tracts of Pittsburgh or River Vein of coal. Total adjusted valuation of $336,192.00.

The County of Greene offers to read Exhibit No. 6, just offered into the record.

[fol. 21 a] Name of taxable, Piedmont Coal Company; Post Office Address, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; No. of acres, 32 1/5; valuation $2737.00; 3510 acres, valuation $298,350.00; 413 acres, valuation $35,-105.00; total adjusted valuation of all property, occupation, etc., $336,192.00.

Q. Will you turn to the assessment of the property of Henry A. Phillips in Wayne Township?

Q. I show witness that part of the book that has been identified as the assessment rolls, marked Exhibit No. 7 and ask him what it is?

A. Assessment of Henry A. Phillips, in Wayne Township.

The County of Greene, by its counsel, now offers in evidence the assessment rolls of Greene County, Pa., as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved and adjusted by the County Commissioners of Greene County, sitting as a Board of Revision and Appeal, for the triennial assessment for the year 1928 for Wayne Township, Greene County, Pa., and particularly showing Exhibit No. 7, being the assessment to Henry A. Phillips of Pittsburgh, Pa., of certain tracts of coal land of a total adjusted valuation of $583,355.00, and offer to read the Exhibit No. 7 into the record.

Name of taxable, Henry A. Phillips, Pittsburgh, Pa.; [fol. 22 a] Coal, Pittsburgh or River Vein; No. of acres 6643; valuation $564,655.00; 220 acres, valuation $18,-700.00; total adjusted valuations of all property, occupation, etc., $583,355.00.

The County of Greene, by its counsel, offers in evidence the Assessment Rolls of Greene County, Pa., as produced by the Clerk of the County Commissioners of Greene County, Pa., as approved by the County Commissioners of Greene County, sitting as a Board of Revision and Appeal for the triennial assessment for the year 1928, for Wayne Township, Greene County, Pa., and particularly showing the assessment of Charles H. Rush of a certain tract of Pittsburgh or River Vein of coal of a total adjusted valuation of $2737.00. This assessment is marked Exhibit No. 7-A, and is offered as a part of the property belonging to Henry A. Phillips the assessment which is appealed from although the assessment is in the name of Charles H. Rush, and offer to read the Exhibit No. 7-A into the record.

Name of taxable, Charles H. Rush; coal, Pittsburgh or River Vein; No. of acres 32 1/5; valuation $2737.00; location of real estate, Coal Book Page 74; total adjusted valuation of all property, occupation, etc., $2737.00.

Court adjourned until 1:30 P. M.

Court convened at 1:30 P. M.

[fol. 23 a] By R. E. Kent: And now, Oct. 15, 1928, by motion of R. E. Kent, Attorney for Mary K. Mapel, et al., at No. 7, September Term, 1926, this case is included and to be tried along with the other cases in the motion made by W. J. Kyle.

By Mr. Kyle: Attorneys for Cumberland Coal Company and others, now move the Court that the appeal of Mary K. Mapel, et al., at No. 7, September Term, 1928, be included with the case which by the Order of Court made this morning were joined for the purpose of trial with the same effect as if this case should have been listed in the original motion made.

By Mr. Waychoff: Same objection as to former motion.

By the Court: Objection over-ruled, exception noted and bill sealed.

By Mr. Waychoff: The County of Greene, by its counsel, offers in evidence the rolls produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved and revised by the County Commissioners sitting as a Board of Revision and Appeal for the triennial assessment for the year 1928, for the township of Wayne, and particularly showing [fol. 24 a] the assessment to Mrs. Roy Smith of Washington, Pa., of a tract of Pittsburgh or River Vein of coal at an adjusted valuation of $467.00, situate in Wayne Township, Greene County, Pa. This Exhibit 7-B being offered in connection with the appeal of Henry A. Phillips, who is the owner of this tract of coal although the same is assessed in the name of Mrs. Roy Smith, is included in the appeal of the said Henry A. Phillips, and offers to read same into the record.

Name of taxable, Mrs. Roy Smith; Post Office address, No. 9, Good Intent, Washington, Pa.; coal, Pittsburg or River vein; No. of acres 5½; valuation $467.00; total adjusted valuation of all property, occupation, etc., $457.00.

Q. I show witness book containing Exhibit 8 and ask him what it is?

A. Greene Improvement Company assessment.

Q. Also show the witness Exhibit No. 9 and ask him what it is?

A. Greene County Coal Company assessment.

The County of Greene offers in evidence the triennial assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved by the County Commissioners, sitting as a Board of Revision and Appeal [fol. 25 a] of Greene County, Pa., for the triennial assessment for the year 1928 for the township of Wayne and particularly showing the assessment to the Greene Improvement Company of Pittsburgh, Pa., of two several tracts of Pittsburgh or River Vein of coal of a total adjusted valuation of $24,565.00 all situate in the township of Wayne, Greene County, Pa., and offer to read the same into the record.

Name of taxable, Greene Improvement Company; Post Office address, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; No. of acres, 253; Valuation, $21,505.00; 36 acres, valuation $3060.00; Location of real estate Coal Book Page 34; total adjusted valuation of all property, occupation, etc., $24,565.00.

County of Greene offers in evidence the assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved and adjusted as a Board of Revision and Appeal from the triennial assessment for the year 1928, and particularly showing the assessment to the Greene County Coal Company of a tract of Pittsburgh or River Vein of coal, the total adjusted valuation of $22,-950.00, and offer to read the same into the record.

Name of taxable, Greene County Coal Company; Coal, Pittsburgh or River Vein; No. of acres 270; valuation $22,950.00; total adjusted valuation, etc., $22,950.00.

[fol. 26 a] Q. I show witness Exhibit No. 10 and ask him what it is?

A. Triennial assessment of Mary K. Mapel for Wayne Township, for the year 1928.

The County of Greene, by its counsel, offers in evidence the assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners, as approved and adjusted by the County Commissioners, sitting as a Board of Revision and Appeal for the triennial assessment for the year 1928 for Wayne Town-

ship, Greene County, Pa., and particularly showing the assessment to Mary K. Mapel, Waynesburg, Pa., of a tract of Pittsburgh or River vein of coal at a total adjusted valuation of $6,596.00, situate in Wayne Township, Greene County, Pa., and offer to read the same into the record.

Name of taxable, Mary K. Mapel, Waynesburg, Pa.; Pittsburgh or River Vein of coal 77 3/5 acres, valuation $6,596.00.

Other real estate, description and value, house and lot $600.00; location of real estate 1/5 Inghram Kent, 1/5 Lewis Kughn in Brave; total adjusted valuation of all property occupations, etc., $7,196.00.

County of Greene offers in evidence assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., sitting as a board of Revision and Appeal for the triennial assessment for the year 1928, and particularly show-[fol. 27 a] ing assessment to R. E. Kent of Waynesburg, Pa., of two tracts of Pittsburgh or River vein of coal, total adjusted valuation of $4000.00, and offer to read same into the record.

Name of taxable, R. E. Kent, Post Office Waynesburg, Pa., coal, Pittsburgh or River Vein; No. of acres, 4.27; valuation $362.00; 42.8 acres, valuation $3638.00; location of real estate 1/5 in Levi Kughn, 1/5th in Inghram Kent estate; total adjusted valuation $4000.00.

County of Greene offers in evidence assessment rolls for Wayne Township, as produced by the Clerk of the County Commissioners from the office of the County Commissioners of Greene County, Pa., as approved and adjusted by the County Commissioners sitting as a Board of Revision and Appeal, for the year 1928, for Wayne Township, and particularly showing the assessment to W. T. Kent of Brave, Pa., showing a tract of Pittsburgh or River Vein of coal with a total valuation of $5,596.00, situate in Wayne Township, Greene County, Pa., and offers to read the same into the record.

Name of taxable, W. T. Kent; Post Office address, Brave, Pa.; coal, Pittsburgh or River Vein; 77 3/5 acres; valuation $6596.00. County of Greene offers in evidence assessment rolls as produced by the Clerk of the County Commis-

sioners from their office as approved and adjusted by the [fol. 28 a] County Commissioners, sitting as a Board of Revision and Appeal from the triennial assessment for the year 1928 for Wayne Township and particularly showing the assessment to Harriett McDonald of Brave, Pa., for a tract of Pittsburgh or River Vein of coal total adjusted valuation $6,596.00, and offers to read the same into the record.

Name of taxable, Harriett McDonald; Post Office address, Brave, Pa.; Coal, Pittsburgh or River Vein; No. of acres 77 3/5 acres; valuation $6,596.00; total adjusted valuation, occupation, etc., $6,596.00.

County of Greene offers in evidence assessment rolls as produced by the Clerk of the County Commissioners of Greene County, Pa., from the office of County Commissioners of Greene County, Pa., as approved and adjusted by the County Commissioners sitting as a Board of Revision and Appeal from the triennial assessment for the year 1928, for Wayne Township, and particularly showing the assessment to Ella K. Fordyce, of a tract of Pittsburgh or River Vein of coal in said township at a total adjusted valuation of $9,662.00 and offers to read same into the record.

Name of taxable, Ella K. Fordyce; coal, Pittsburgh or River Vein; No. of acres, 77 3/5; valuation $9,662.00; location of real estate 1/5 Inghram Kent, 1/5 Levi Kughn; total adjusted valuation, occupation, etc., $9,662.00.

[fol. 29 a] County of Greene offers in evidence assessment rolls of Greene County, as produced by the Clerk of the County Commissioners from the Commissioners Office of Greene County, Pa., as approved and adjusted by the County Commissioners sitting as a board of Revision and Appeal for the triennial assessment for the year 1928, for Wayne Township, particularly showing assessment to William Seifert, of Pittsburgh, Pa., of a tract of Pittsburgh or River Vein of coal of a total adjusted valuation of $11,730.00; and propose to read the same into the record.

Name of taxable, William Seifert; Post Office address, Pittsburgh, Pa.; coal, Pittsburgh or River Vein; No. of acres 138; valuation $11,730.00; total adjusted valuation $11,730.00.

County of Greene, by its counsel, offers in evidence, assessment rolls as produced by the Clerk of the Commissioners of Greene County, from the office of the County

Commissioners of Greene County, Pa., as approved by the County Commissioners sitting as a Board of Revision and Appeal, for the triennial assessment for the year 1928, for Wayne Township, and particularly showing the assessment to W. J. Kyle, Trustee, of Waynesburg, Pa., for a tract of Pittsburgh or River Vein of coal of a total adjusted valuation of $22,185.00, and propose to read same into the record.

Name of taxable, W. J. Kyle, Trustee; Post Office ad-
[fol. 30 a] dress, Waynesburg, Pa.; Coal, Pittsburgh or River Vein; No. of acres 261; valuation $22,185.00. Location of real estate coal book page 62, total adjusted valuation, etc., $22,185.00.

County of Greene, by its counsel, offers in evidence the assessment rolls, as produced by the Clerk of the County Commissioners from the office of the County Commissioners, of Greene County, Pa., as approved and adjusted by the County Commissioners sitting as a Board of Revision and Appeal of Greene County, Pa., for the triennial assessment for the year 1928 for Perry township and particularly showing assessment to Henry A. Phillips, of Pittsburgh, Pa., of 566 acres of Pittsburgh or River vein of coal with a total adjusted valuation $62,260.00, and propose to read the same into the record.

Name of taxable, Henry A. Phillips; Post Office address, Pittsburgh, Pa.; Coal, Pittsburgh or River Vein; No. of acres 566. Valuation $62,260.00. Location of real estate Coal Book Page 50; total adjusted valuation, etc., $62,260.00.

County of Greene, offers in evidence assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners, of Greene County, Pa., as approved and adjusted by the County Commissioners sitting as a Board of Revision and Appeal of Greene County, Pa., for the triennial assessment for the
[fol. 31 a] year 1928; for Perry Township, and particularly showing assessment to the Greene County Coal Company of Pittsburgh, Pa., of 3207 acres of Pittsburgh or River Vein of coal at a total adjusted valuation of $352,770.00 and propose to read same into the record.

Name of taxable, Greene County Coal Company; Post Office address, Pittsburgh, Pa.; coal, Pittsburgh or River Vein; Number of acres 3207; valuation $352,770.00; location of real estate, Coal Book Page 20; total adjusted val-

uation of all properties, etc., $352,770.00. Identified as Exhibit No. 14.

County of Greene, by its counsel, offers in evidence assessment rolls as produced by the Clerk of the County Commissioners from the office of the County Commissioners, sitting as a Board of Revision and Appeal of Greene County, Pa., for the triennial assessment year of 1928, for Greene Township, and particularly showing the assessment to the H. C. Frick Coke Company of 302 acres of Pittsburgh or River Vein of coal, with a total adjusted valuation of $67,950.00, and offer to read the same into the record, which is identified as Exhibit No. 15.

Name of taxable, H. C. Frick Coke Company; Coal, Pittsburgh or River Vein; No. of acres 302; valuation $67,950.00; total adjusted valuation, etc., $67,950.00.

Q. I show witness Exhibit No. 5, being an assessment of the Cumberland Coal Company in Wayne Township, and [fol. 32 a] call his attention to the fact that in the total adjusted valuation and the value of the tract of coal there are two sets of figures one of which has a line drawn through it and ask him to explain what that is and why it is?

A. One with the line drawn through it is the valuation placed on it by the assessors and the other one is the valuation placed by the Board of Revision.

Q. Is that true as to all of the assessments in which appeals have been taken?

A. It is.

Cross-examination.

By Mr. Kyle:

Q. By whom were the figures made in the books that you have identified?

A. The figures were made by the clerks in the office under direction of the Board of Revision.

Q. I show witness Exhibit No. 1. I see in that exhibit in the total adjusted valuation the figures $2,494,200, by whom was that figure placed in this book?

A. By the assessors.

Q. The figures over it $2,401,830.00, by whom was that made?

A. The clerk in the Commissioner's Office made the upper and the lower was made by the assessor of Cumberland Township.

Q. What is your official capacity Mr. Lemley in the office?

A. Commissioner's Clerk.

[fol. 33 a] Q. The other clerks in the office work under your direction?

A. Yes, sir.

Q. When they made the changes on these books they were made under your supervision and direction?

A. No, the Board of Revision gave the corrected list to me and I gave it to——

Q. You gave them the change to make?

A. Yes, to the girls.

Q. That is done under your supervision?

A. Yes, sir.

Q. By what authority did you direct the change to be made in this assessment in Exhibit No. 1?

A. From the Board of Revision.

Q. How did that authority come to you?

A. Through the County Commissioners acting as a Board of Revision.

Q. When did they give you this direction?

A. 26th day of April, 1928.

Q. I see you referred to a book to refresh your memory as to that date what is the book to which you refer?

A. Minute Book of the County Commissioners.

Q. Is there a minute in that book showing the action of the Board of Commissioners sitting as a Board of Revision and Equalization?

A. There is.

Q. Under date of what?

A. April 26, 1928.

Q. The book which you have just looked at is the Minute [fol. 34 a] Book of the County Commissioners for the year 1928?

A. Yes, sir.

Q. At what page in that Minute Book do you find this minute?

A. Page 61.

Q. Now that minute is the whole authority which you had for making the change in the valuation as shown in Exhibit No. 1?

A. Yes, sir.

Q. Is that also true of the changes which were made at Exhibits No. 2, 3, 4, 5, 6, 7-a, 7-b, 8, 9, 10-a, 10-b, 10-c, 10-d, 11, 12, 13, 14 and 15?

A. Yes.

Q. And all the authority which you had for making all of those changes is contained in that particular minute?

A. It is.

Q. On page 61 of the Minute Book for the year 1928?

A. Begins on 61 and is on pages 62 and 63.

As part of the cross-examination of the witness on the stand appellants offer in evidence the Minute Book of the County Commissioners with special reference to pages 61, 62, 63 and 64, as just identified by the witness.

Mr. Waychoff asks for an offer.

By Mr. Kyle: We offer it in evidence for the purpose of showing that the minute of the Resolution of the Board of Commissioners sitting as a Board of Revision and Equali-[fol. 35 a] zation does not contain any authority for making the changes indicated in the exhibits; that the names of the appellants who are the particular taxpayers interested, are at no place named in this resolution, and no action is shown by the County Commissioners with reference to the valuation of the property of these appellants.

By Mr. Waychoff: The County of Greene objects to the offer for the reason that it was not intended that every tract of coal in the county should be taken up but that each township was considered as a whole and all the coal in a given township was considered as a whole in that resolution and the valuation and assessment was adjusted by the Board of Revision by townships for all the coal in the township.

By the Court: Objection overruled for the present, note exception and seal bill for the County of Greene.

By Mr. Kyle: We offer to read the same into the record.

"At a meeting of the County Commissioners of Greene County, Pennsylvania, held at their office in the Court

House, in Waynesburg, Greene County, Pennsylvania, on the 26th day of April, 1928, all commissioners being present [fol. 36 a] on motion of Paul Debolt, seconded by J. N. Scott, the following preamble and resolution was adopted.

Whereas, The County Commissioners, issued their precepts to the assessors of the various townships, boroughs and wards in Greene County, Pennsylvania, to make the triennial assessment of the taxable property within their respective townships, boroughs and wards for the years 1928, 1929 and 1930, and

Whereas, The assessors of various townships, boroughs and wards, after having been duly sworn according to law, made the triennial assessment of the taxable property in their respective townships, boroughs and wards, valued the said taxable property, gave notice to all taxables of the amount of the valuation and the time and place of appeal, and returned said assessment and valuation to the County Commissioners, and

Whereas, The taxable property within the several townships, boroughs and wards within Greene County, having been ascertained, valued and returned to the Commissioners by the several assessors, the County Commissioners in compliance with the law published in the Waynesburg Republican and Democrat-Messenger, two weekly newspapers published in Waynesburg, Greene County, Pennsylvania, a statement showing the assessment and aggregate value made by each assessor in the County upon the taxable property, both real and personal, salaries, emoluments of office, occupation, trades and professions in the [fol. 37 a] respective townships, boroughs and wards, and

Whereas, The County Commissioners, after the return and publication of the assessment and valuation, organized and were on March 16th, 1928, sworn as a board of revision and proceeded to examine and inquire whether the assessment and valuation made and returned by the assessors was made in conformity to the laws of the Commonwealth of Pennsylvania, and whether all taxable property assessed and valued for taxable purposes was valued at a sum or price — or less than the same would bring after full public notice at public sale, or whether the various assessors in assessing and in valuing all the taxable property in their respective townships, boroughs and wards applied a uniform average

ratio of the assessed value to the actual market value in determining the value of each separate taxable property, and

Whereas, The County Commissioners, as a board of revision, proceeded to examine the assessment and valuation of the taxable property in the various townships, boroughs and wards in Greene County, Pennsylvania, and to raise the valuation of such taxable property as they believed to have been valued too low and to reduce the valuation of such taxable property as they believe- to have been valued too high. djourning from day to day until the whole of the valuation of the taxable property in the various townships, boroughs [fol. 38 a] and wards was either approved as returned by the assessors, or revised, raised, lowered and equalized by the board of revision.

Therefore, be it resolved, That the valuation of the Pittsburgh or river vein of coal in the various townships, boroughs and wards in Greene County, for the years 1928, 1929, nd 1930, be and the same is hereby established by the County Commissioners sitting as a board of revision, as follows, increasing such assessments where the figures as below set forth for the respective townships and boroughs are in excess of the assessments as returned by the assessors and decreasing the same where the assessments as set forth below for the respective townships and boroughs are less than the assessments as returned by the various assessors.

Aleppo Township	$25.00	per	acre
Center "	50.00	"	"
Carmichaels Borough	260.00	"	"
Clarksville "	250.00	"	"
Dunkard Township	250.00	"	"
Franklin "	90.00	"	"
Greene "	225.00	"	"
Gilmore "	40.00	"	"
Graysville Borough	37.00	"	"
Jefferson "	250.00	"	"
Jefferson Township	250.00	"	"
Jackson "	30.00	"	"
Monongahela "	300.00	"	"
Morris "	50.00	"	"
Morgan "	230.00	"	"
[fol. 39 a] Mt. Morris Borough	110.00	"	"
New Freeport Borough	25.00	"	"

Perry Township	110.00	"	"
Richhill "	32.00	"	"
Rices Landing Borough	250.00	"	"
Springhill Township	25.00	"	"
Whiteley "	90.00	"	"
Wayne "	85.00	"	"
Washington "	85.00	"	"
Waynesburg Borough	120.00	"	"
Cumberland Township	260.00	"	"

That in each township, borough or ward in said county, in which is located an open mine into the Pittsburgh vein of coal, there shall be one hundred acres, if that quantity be owned or leased, and if less than that quantity, then such quantity as may be owned or leased, assessed to the owner thereof as "Active Coal", and said active coal shall be valued at the sum of five hundred dollars per acre, except that in any and all cases where any coal mining Company, individual or individuals shall have during the year 1927 mined the Pittsburgh vein of coal in excess of seventy-five acres, any and all such Companies or individuals shall be assessed as to such block where such mining has been so done with two hundred and fifty acres instead of one hundred acres of active coal.

That in each township, borough or ward in said county, in which there is located an open mine into the Mapletown or Sewickley vein of coal, there shall be one hundred acres, if [fol. 40 a] that quantity be owned or leased, and if less than that quantity, then such quantity as may be owned or leased, assessed to the owner there of as "Active Coal" and said active coal shall be valued as returned by the various assessors for the year 1928, except that in any and all cases where any coal mining company, individual or individuals shall have during the year 1927, mined Mapletown vein of coal in excess of seventy-five acres, any and all such Companies or individuals shall be assessed as to such block where such mining has been so done with two hundred and fifty acres instead of one hundred acres of active coal.

That in each township, borough or ward in said county, in which there is located an open mine into the Waynesburg or Hill vein of coal there shall be ten acres, if that quantity be owned or leased, and if less than that quantity, then such quantity as may be owned or leased, assessed to the owner

thereof as "Active Coal" and shall be valued at the sum of one hundred dollars per acre, except that in any and all cases where any coal mining company, individual or individuals shall have during the year 1927, mined Hill vein of coal in excess of seventy-five acres, any and all such companies or individuals shall be assessed as to such block where such mining has been so done with two hundred and fifty acres instead of one hundred acres of active coal.

That the assessment made and the valuation established [fol. 41a] by the various assessors in the various townships, boroughs and wards in Greene County, Pennsylvania, of all occupations, Pittsburgh coal, Mapletown coal, Waynesburg coal, surface lands, lands including coal, houses and lots and the amounts of money at interest and all other real and personal property etc., held by taxables therein as returned by the assessors to the County Commissioners for the year 1928, left as returned, or raised, lowered, revised or equalized as appears by the assessment rolls of taxable property of each township, borough and ward for the year 1928, are hereby made a part of this resolution, and the various valuations fixed therein as so returned by the assessors or as revised, raised, lowered or equalized by the Board of revision are hereby fixed and established as the values of all occupations, Pittsburgh Coal, Waynesburg Coal, and all other real and personal property, etc., in each of said townships, boroughs and wards for the years 1928, 1929 and 1930.

That the assessment rolls of each township, borough and ward in Greene County, Pennsylvania, showing the revised valuations of all the taxable property within the townships, boroughs and wards in Greene County, for the year 1928, are the taxable values of all property in the various townships, boroughs and wards in Greene County, for the years 1928, 1929 and 1930.

	Noes	Yeas
[fol. 42 a]	———	J. N. Scott.
	———	M. P. Headley.
	———	Paul Debolt."

By Mr. McClay:

Q. Mr. Lemley I show you clipping from the Democrat-Messenger, showing the triennial assessments for the year 1928 of Greene County, do you have the original of that, or is there any objection to introducing that copy?

By Mr. Waychoff: None whatever, but suggest that he gets the original copy.

Q. I show you Exhibit A, and ask you what that is?
A. Copy of the assessments as returned by the assessors of Greene County.
Q. Was that the exhibit adopted by the County Commissioners?
A. This was what was returned by the assessors' books before any revision had been made.
Q. After revision had been made what paper do you have that would show that?
A. Assessment books show that themselves.
Q. The publication which I showed you in the paper published at Waynesburg is a copy of that, is it?
A. Yes, sir.
Q. In assessing this property you assessed it at the full acreage?

[fol. 43 a] By Mr. Waychoff: Objected to inasmuch as this witness had nothing whatever to do with the assessment.

By Mr. McClay: I will withdraw the question.

Q. State whether or not as chief clerk it was your business to keep the records of the County Commissioners and correct the acreage assessed and the amounts of valuations placed thereon?
A. We copied from the assessment books.
Q. You supervised the records?
A. Yes, sir.
Q. They are all in your charge?
A. Yes, sir.
Q. I asked you whether the records of Greene County show that the coal was assessed upon the basis of the full acreage?

By Mr. Waychoff: Object to that question inasmuch as the records are the best evidence.

By the Court: Over-rule objection for present, note exception and seal bill for the County of Greene.

A. Coal was to be assessed at full acreage.
Q. The surface, is it assessed at the full acreage?
A. It is not.

Q. Where a man owns both the surface and the coal, or the fee to the entire property is he assessed with the full acreage?

A. I could not tell you for sure, but I think he has 6% off on both the coal and the surface.

[fol. 44 a] Q. What you know of your own knowledge?

A. I know some have the 6% off.

Q. Isn't it a fact now that these exhibits which have been offered in evidence by the County of Greene and to which reference has been made show that in every case the coal assessed has been upon the full acreage and where the owner owns both the coal and the surface there is a deduction of 6%?

A. I could not tell about all of it.

Q. As far as your knowledge goes?

A. I think the 6% was taken off.

Q. How about the surface alone?

A. Six percent off.

Q. That has never been allowed on coal acreage?

A. No.

Q. There has been no reduction on coal acreage?

A. No, sir.

Q. Mr. Lemley, neither the coal or the surface is assessed at its full actual value?

A. I do not know.

Mr. Waychoff asks for an offer.

By Mr. McClay: For the purpose of striking down the prima facia case made up by the County Commissioners in this appeal I propose to ask the witness upon what basis they have valued the surface and the coal in Greene County, whether at its actual value as provided by the statute, or at much less valuation.

[fol. 45 a] By Mr. Waychoff: This witness not having anything whatever to do with the assessment and there being in the Court present witnesses, the County Commissioners, who are the members of the Board of Revision, who have the full and complete knowledge about these matters about which this witness is now being asked the evidence is objected to.

By Mr. McClay: I will withdraw the question.

Q. Were you present at the meetings of the Board of Commissioners at the making of the assessments and valuations upon these various properties?

A. Not at all times no.

Q. Were you present at the time they made any final decisions, or they were reported to you?

A. I was in the office when the assessment was made, but I don't think I was in the present office.

Q. Were you present at any time when they discussed the question of valuations to be placed upon the real properties surface and coal?

A. At times yes.

Q. Do you know whether there was any percent fixed as a basis for all these properties taking into consideration their actual value and valuations placed thereon?

A. 50% was my understanding.

Q. Was that so in all the townships in this county?

[fol. 46 a] A. Yes.

Q. Was it so in Aleppo township?

A. Yes.

Q. Where did you get that understanding Mr. Lemley?

A. From the assessors and Board of Revision.

Q. When was that before making the assessments or afterwards ?

A. Just directly after the books were returned is my recollection.

Q. Is there any minute upon your Minute Book of that action?

A. I don't remember I could not tell you.

Q. Do you have any other minute on that except the minute of April 26, 1928?

A. That is the only minute there is the Minute Book shows it all.

Q. That was the final action of the Board of Revision and there is not a word in there about the percent?

A. I think there was some minutes after that date, but not for coal for other property.

Q. What kind of property?

A. Houses and lots and farm lands.

Q. Did it relate to the ratio?

A. I am not sure.

Q. There is no minute except the one I called your attention to of April 26, 1928, with relation to the ratio of percent to be allowed from the final assessment?

A. There is other minutes in regard to the Board of Re-
[fol. 47 a] vision, but whether it was in regard to the ratio I don't remember.

Q. You look at the Minute Book and see?

A. I do not notice anything in the minutes in regard to the ratio.

Q. The County Commissioners fixed their assessments solely with respect to the township line?

A. Yes.

Q. So that if the piece of property was located on one side in Greene Township and the next door neighbor was in Cumberland Township there would be a difference in valuation of something like $75.00 per acre?

A. Whatever it is was placed there by the Board of Revision.

Q. Did the Assessors attempt to value the property from actual knowledge obtained by them by consulting Coal Engineers?

A. I could not answer that.

Q. Do you know what information the County Commissioners obtained in the fixing of these valuations?

A. I cannot answer that question.

Q. I am asking if you know?

A. I do not.

Q. You have no knowledge of whether they consulted coal and mining engineers, whether they consulted persons who knew what it would cost to build railroads or adopt methods of transportation, or the length of time that the coal would likely lie there before it was mined, you have no knowledge of that?

[fol. 48 a] A. No, sir.

Q. Would you have known if they had obtained that knowledge?

A. I might not know.

By Mr. Waychoff: The County of Greene rests.

By W. J. Kyle: The appellants offer in evidence the final decree of this Court at No. 74, June Term, 1922, with which was consolidated Nos. 75 and 76, and which decree applies to the coal owned by all of the large number of appellants

from the triennial assessment of 1922, fixing the valuations of coal owned by those appellants in the several townships of Greene County, Pa., at the triennial assessment for the year 1922, this to be followed by a similar decree, or a decree entered in the case of the large number of appeals from the triennial assessment for 1925, including the same appellants and same coal lands, both of which to be followed by proof that since 1922 coal has not increased in value, but has decreased and the market value of the coal when the assessment was made in 1928 was much lower than at that date. For the purpose of showing that the assessments are too high.

By Mr. Waychoff: The county objects to the offer of the record of former appeals, first, the record of the decree in the former appeal of 1922 because that appeal was tried [fol. 49 a] and finally adjusted upon a technicality without any proof upon the part of the County of Greene as the real value of coal. Second, because the decree of 1925 was a result of the compromise between the County and appellants and not a result of investigation by this Court as to value of coal or evidence thereabout; and third, because the decrees of Court in 1922 and 1925 in so far as being evidence in this case are incompetent, irrelevant and immaterial.

By the Court: Objection sustained, exception noted and bill sealed for appellants.

J. N. Scott called as if on cross-examination.

By Mr. Kyle:

Q. You are President of the Board of County Commissioners?

A. Yes sir.

Q. You were present at the meeting or meetings of the County Commissioners sitting as a Board of Revision and Equalization for fixing the valuations of coal lands for three years beginning with 1928?

A. Yes, sir.

Q. Did you fix the valuations of real estate throughout the County at the price at which it would sell after due public notice?

A. No.

Q. Did you attempt to fix it at what it would sell for after due public notice at public sale?

[fol. 50a] A. I said no.

Q. Did you fix it at more or less than that amount?

A. Less.

Q. Did the Board of Commissioners adopt a fixed ratio of the actual value at which they would assess the coal?

A. Yes.

Q. When did they adopt that?

A. Minute Book would show I do not recall the dates.

Q. Are you familiar with the minute book?

A. I cannot say that I am.

Q. If you would take the minute book could you point out the minute fixing that ratio?

A. I would not say it was on the minute book I don't think it was.

Q. Was there any resolution adopted as to ratio?

A. I question if it was a form of resolution if it was of course it is there.

Q. Now in fixing the value of coal lands you took the returns of the township assessors and increased or decreased them according to the judgment of the Board of County Commissioners?

A. Yes sir.

Q. In arriving at that judgment what information did you obtain as to coal values throughout the County?

A. The general knowledge that we all have that have lived here so long the purchase price of coal, the sales recently and taking into consideration the falling market and all [fol. 51a] things that tend to show the value of coal.

Q. Are you an experienced coal miner?

A. Never took much out.

Q. Are you a Mining Engineer?

A. No sir.

Q. Have you had any business experience in obtaining any knowledge that would enable you to determine what length of time it would be before coal in a given section would likely be mined?

A. I have heard all that talked over, I have heard that discussed quite a bit.

Q. By whom did you hear it discussed?

A. Now you know we have had plenty of advice from you fellows in the last few years, we have talked it over

with you fellows and with operators and have been closely associated with men in the operating business for years.

Q. Who are these operators?

A. Mr. Lingle, Mr. Gates and Mr. Bell and some in Morgan township and with your men. Mr. Kyle knows about that, of course, he was present.

Q. Who do you mean?

A. The men we met in your office.

Q. You mean the Bethlehem Steel Company?

A. I don't think so, I think it was the Emerald Coal Company.

Q. Do you know the names of these men?

A. I cannot recall, but I know men who do know who they are.

Q. What did these men say?

[52 a] A. Of course they said the coal was assessed too high.

Q. That was just about the time you made this assessment?

A. Previous to that.

Q. Do you recall that one of those men was the expert of the Bethlehem Steel Company named H. H. Stewart?

A. I was not introduced to anyone in that official capacity.

Q. You recall H. H. Stewart?

A. Not certainly.

Q. Have you made a study of the mining conditions in this county?

A. I believe I would have to say that I have.

Q. Did you Mr. Scott as County Commissioner employ any experts of any kind in arriving at your determination at these dates?

A. We did not.

Q. What is your business?

A. County Commissioner, Telephone Director, farmer and have fooled a little with coal along with the rest of you. Had an interest in a coal mine a few years ago.

Q. Where was that?

A. I think that was in Kentucky.

Q. Now Mr. Scott in Cumberland Township you fixed the value of coal at the same prire all over the township?

A. Yes, sir.

Q. From your own knowledge of coal values which you have testified to is it your opinion that the coal fronting on [fol. 53 a] the river is the same value as coal back in that township?

A. My opinion, I question it and yet if the block is contiguous and joined up there would be unlimited trouble to zone it.

Q. As a matter of fact Mr. Scott the only appellant here from the assessed valuations in Cumberland township is the Cumberland Coal Company, are you familiar with their holdings in that township?

A. I thought I was.

Q. Do you know they do not have any river front coal?

A. I do not; I understood they did have.

Q. So if it be true they do not have river front coal you could not say there coal would be contiguous to that fronting on the river?

A. Our information was when we assessed this coal that they had river front coal in two townships.

Q. Where did you get that information?

A. I am not able to say who that was.

Q. You could have obtained the precise information?

A. We thought we were getting the exact information on that and you have some river frontage if I recall it correctly.

Q. Don't you recall that the coal people met here in this room and they repeatedly stated their coal was all back from the river front?

A. I do not.

Q. Are you not getting this confused with Cumberland Coal Company and the H. C. Frick Coke Company?

[fol. 54 a] A. I am sure the information I got was that the Cumberland Coal Company joined the river front in two places, one in Monongahela and one in Cumberland township. That is the information I had.

Q. Mr. Scott what is the practice in the Commissioner's Office in assessing real estate with reference to the deduction of 6% in area?

A. I think the assessors always take that off, that is taken off before it comes to the Commissioners Office as I understand it.

Q. You know all the surface land is assessed at 6% less?
A. I presume it is.
Q. On the coal?
A. Where it is separated from the surface I presume according to the survey made when the coal was sold. Where it is not separated from the coal I presume it is the same acres as the surface, just presume it is that point was never brought up before.
Q. What would you say Mr. Scott is the relative value of the coal four or five miles back from the river front in Cumberland township as compared with the coal fronting on the river?
A. It would depend entirely upon conditions whether it belonged to the same block or not, and of course an isolated tract on the river front would naturally be worth more than one five miles back. It would depend on where it was located; whether it was good for mining property it would have to be ascertained when the location was made.
Q. Did the County Commissioners ever make or have made for them a study or a survey of the probable time [fol. 55 a] when the coal back from the river front in Cumberland township, or Greene Township, or Perry, or Wayne Township will be operated?
A. The present board have not had a study of that made.
Q. As far as you know they had no scientific knowledge on that question?
A. It would not be called scientific knowledge from your standpoint of course.
Q. Mr. Scott it is true I believe that in fixing this valuation you adhered entirely to township lines?
A. Yes, sir.
Q. You fixed the same valuation of coal on the whole of each township?
A. Yes, sir.

By Mr. McClay: There was some confusion at the time this exhibit was marked showing that Cumberland Coal Company had some acreage on the river and Mr. Bradley was somewhat irritated by the fact that we own coal in Jefferson township. Now we call your attention to the coloring on that map which shows that Cumberland Coal Company does own acreage in Jefferson township and in

Monongahela Township, marked Cumberland Coal Company in white and no appeal taken from it?

A. You do own that from the river in Monongahela township.

Q. Calling your attention to the fact that it was the old [fol. 56 a] Dilworth Coal Company at Rices Landing?

A. Yes, sir.

Q. Rices Landing is in a borough all by itself?

A. Yes, sir.

Q. Did you not determine the value of that coal in the rear in Cumberland township without trying to obtain any information with regard to the cost or construction of a railroad or right of way from the river?

A. We did not figure on a railroad to take that out that is past history.

Q. How would you take it out?

A. From the river front or belt system.

Q. Could you take it out from the rear of Cumberland township line?

A. I understand they are doing that in Fayette. Now we did not go into that to arrive at the present valuation it was not necessary to get it that fine.

Q. Why?

A. Because the coal is not assessed high enough yet.

Q. You would call $260.00 as pretty high price wouldn't you?

A. Not in that location.

Q. What is there at that location that is not about the coal throughout the county?

A. Vast difference between front coal and back coal.

Q. What way?

A. Accessibility, it does not need railroad to get it out. [fol. 57 a] Coal across the river is valued so high would make ours on this side look so low.

Q. Do you know about the quality of the coal there?

A. I have heard it discussed.

Q. Was it high in sulphur?

A. Part of it.

Q. Was it high in ash?

A. I think some of it.

Q. Do you know the mine there at Rices Landing?

A. I know the Dilworth mine.

Q. Are they dismantling it now?

A. I hear they are.

Q. Do you know why?

A. No.

Q. Don't you know the coal in Rices Landing, Jefferson, and Cumberland township, is not equal to the coal across the river?

A. I have heard it claimed it was not quite equal.

Q. Then how far is the rear line from the river in Cumberland township what is the distance?

A. Possibly six or seven miles air line.

Q. You put $260.00 an acre, or 50% altogether, representing 50 per cent of the true value on that or $260.00 on that front coal?

A. We assessed the coal in the whole township the same because the coal at the back end of the township sold for twice the assessed valuation.

Q. Take Whiteley township the coal on one side adjoining Greene township is assessed at $225.00 per acre, and on one side of the line assessed at $90.00 per acre, what is [fol. 58 a] the difference in that quality of coal?

A. It was not based on the quality.

Q. On what was it based?

A. Division according to township lines.

Q. In Jefferson township you have assessed that at $250.00 and just across the line you have assessed Cumberland township at $260.00?

A. You have to make a division line somewhere if you ever get the values where they belong. There is always a drop on each side of the division line?

Q. Why?

A. Because the farther you get it is not worth so much; you have to gradually drop down.

Q. That is the only reason? What was Greene Township coal assessed at prior to this assessment of 1928?

A. I think $165.00.

Q. In the 1922 assessment it was $160.00?

A. I am not familiar with that.

Q. Why did you raise it from $165.00 to $225.00?

A. Because we thought it was too law compared with Cumberland township.

Q. Why did you think it was too low?

A. From its location and understanding we had from the quality of the coal.

Q. What did you learn about its location?

A. I am not responsible for what the previous commissioners have done.

Q. What do you say about its location you know the nearest line to the river is some three miles?

[fol. 59 a] A. We figured this way if Monongahela and Greene townships classed as a whole with Cumberland and some of the same owners owned the coal it would have to be a contiguous block and we were also told by coal men that Greene township was not assessed in proportion to other townships.

Q. What coal men told you that?

A. The Nemacolin people.

Q. What Nemacolin people tell you that?

A. Mr. Lingle and Mr. Gates.

Q. Do they own anything in Greene Township?

A. I don't know.

Q. How are they interested in Greene Township?

A. That was just in general discussion as we talked it over many times.

Q. In other words conversation?

A. Yes.

Q. No liability placed on either of you?

A. Certainly not.

Q. That Greene Township coal is not opened up yet?

A. No.

Q. Neither is the Cumberland Coal Company in Cumberland Township?

A. I think not.

Q. In Monongahela Township how many operations are there?

A. Several.

Q. And you have to maintain schools and roads because of the increased population?

A. We do in Cumberland also quite well acquainted with it.

[fol. 60 a] Q. The properties owned by the Cumberland Coal Company in Greene Township does not cost you anything in the way of schools, etc.?

A. Not yet.

Q. Do you have any idea when they will?

A. I do not.

Q. Would it surprise you if you were told they would not take coal out of there in 22 years.

A. Yes, sir.

Q. You would get the benefit of all those taxes?

A. We need them yes.

Q. Mr. Lingle's operations are in Cumberland township?

A. Yes, sir.

Q. They are right on the river?

A. Yes, sir.

Q. Did he suggest to you that the Cumberland Coal Company ought to pay on the same basis, six, eight or ten miles back?

A. I don't think he went so far as that.

Q. How far did he go?

A. This was general discussion you understand and in the course of that discussion he gave his opinion that Greene township coal was not assessed in proportion with other coal along the river.

Q. I asked you whether he expressed himself to be of the opinion that the Cumberland Coal Company on its coal, which it owned in the rear of Cumberland township, ought to be assessed on the same basis as that on the river?

A. I think that was expressed.

[fol. 61 a] Q. Why did you assess it?

A. Because I said before we were making division line of township lines.

Q. Within the past three years?

A. I cannot recall exactly when the Garard coal was sold, since 1922 at least.

Q. Since 1925?

A. I am not certain but it was recently.

Q. Was it assessed how recently?

A. It is not worth while to guess but seems to me like two or three years, but it could easily be found out.

Q. How many acres has Mr. Lingle's company up there?

A. Several thousand acres, six or eight thousand acres.

Q. That is quite an operation?

A. Yes sir.

Q. They excavate a great deal of coal each year?

A. Yes sir.

Q. But they transport it to their plants in the manufacture of steel?

A. Yes sir.

Q. The entire township is assessed the same except the live coal? How many acres do you ascribe as live coal?

A. 250 acres.

Q. All the rest you assessed on the basis of $260.00 per acre?

A. Yes sir.

Q. Mr. Scott did you examine the 1925 assessments?

[fol. 62 a] A. Yes I have looked them all over.

Q. Did you look at the assessments for 1922?

A. I have looked them all over.

Q. And 1919?

A. I saw them all, of course, I don't recall what they are?

Q. Didn't you take them into consideration?

A. No sir certainly not.

Q. Cast them aside?

A. They had nothing to do with the present.

Q. What has been the condition of the coal business for five years back?

A. It has been dull, there has been periods of dullness perhaps, but while we were discussing the biggest fight on coal valuations was made immediately after coal companies made the biggest profit they ever made.

Q. When was that?

A. 22 or some where along there.

Q. During the years 1919, 1920?

A. No in 1921 the coal business was more progressive than it ever was, or ever will be.

Q. There has been practically no sale of coal in Greene County since 1925?

A. For the reason it was all bought up except a few isolated pieces that have been taken up since.

Q. What ones do you mean?

A. The Lantz coal, Joseph Moredock and others.

Q. Do you know what the Lantz coal sold for?

A. I think $400.00 per acre.

[fol. 63 a] Q. That was in Greene township?

A. Yes.

Q. And you have assessed it at $225.00?

A. Yes.

Q. And the rest of it in the other township is not near up to its 50%? You knew that the Lantz coal was bought by the Cumberland Coal Company because it was right connected with its obligations and originally contemplated in the purchase?

A. No, I did not know that. And I presume when you bought it you wanted it or you would not have bought it?

Q. Would that make any difference to you in the assessment?

A. That obligation has not gone in some of these coal sales, no obligation like that in the Long coal or Moredock coal.

Q. Who bought the Long coal?

A. I forget.

Q. Who bought the other coal?

A. I forget it is a matter of record.

Q. I show you Exhibit C what is that?

By Mr. Waychoff: Asks for an offer.

By Mr. McClay: I propose to ask the witness whether they did not publish Exhibit C at the expense of the County and use it there that to be taken in connection with his testimony that they never took into consideration the assessments of 1922 and 1925, for the purpase of ascertaining [fol. 64 a] whether they have put the true and actual value upon this property.

By Mr. Waychoff: Object to the question regarding Exhibit C for the same reason we objected to the offer of the settlements of the appeals in 1922 and 1925.

By Mr. McClay:

Q. When was that issued?

A. 1928 this year.

By the Court: Sustain the objection, note exception and seal bill for appellants.

A. Of course we were familiar with these and looked over their work and record and compared their prices and I don't think we should say we did take previous values for real values it may have had some influence on our decision, but there is so many things entering into the making up of a man's opinion.

Q. You did take it into consideration?

A. Of course it was talked over and considered, but was not taken as a basis for our present valuation.

Q. No, I asked you if you considered it for 1928 valuation?

A. Of course it was talked over and discussed.

Q. Everything that was brought to your attention as to actual values was talked over?

A. Certainly.

[fol. 65 a] Q. But you did not know anything about the cost of transportation? You did not know anything about the depth of the coal?

A. Yes.

Q. How deep was the Greene Township coal?

A. I can tell you better about my own township. Cumberland where I live is about 500 ft.

Q. Is there any drift coal there?

A. There is no drift coal in Cumberland township.

Q. Did you investigate the cost of the shaft?

A. I have heard it discussed, but we did not take it up in this coal valuation.

Q. You did not consider the amount of acreage around the shaft that would justify the sinking of the shaft 500 feet?

A. Of course all those things we thought of but that does not enter into these valuations.

Q. Did you discuss the question that if you were to sell these coal tracts as a whole owned by one company, did you talk over what you might get for them?

A. That matter has been discussed.

Q. Did you discuss how many purchasers there were for large tracts of coal?

A. Not in particular.

By Mr. Waychoff: Objected to because it is not the criterion.

Q. Were you advised by your counsel that you had to take the farm line and divide it up and take the valuations of that coal on the farm lines?

A. Certainly not.

[fol. 66 a] Q. Suppose you were to divide this coal into what would appeal to purchasers, say 3000 acres, how many purchasers do you suppose would bid?

A. Of course the bigger the blocks of coal the fewer the purchasers, but I don't think that enters into the valuations of coal.

Q. Did you take into consideration the prima facie object of the assessment, and the prima facie duty in passing upon these appeals, was to fix a uniform valuation so that no corporation would be assessed with more than its proportionate share of taxes?

A. That is exactly what we tried to do.

Q. Yet you assessed the Youngstown Sheet and Tube Company along the river with — same price that you assessed the Cumberland Coal Company about six or ten miles back?

A. It is the same price.

By the Court:

Q. You said something about assessing active coal?

A. So many acres around the mouth of the mine, or anywhere at all, but so much that provides for the value of their plant and the coal they take out in the last two years.

Q. Valuing that, in the case of Buckeye Coal Company, do you add that on the whole acreage of 250 acres at a certain value?

A. We assessed 250 acres at $500.00, where the acreage mined the previous years was above 75 acres.

Q. Crucible and Mather also mined more than 75 acres? [fol. 67 a] A. I think the previous board made an assessment of 100 acres for active coal.

Q. In assessing this coal in Cumberland township and also in Greene township did you take into consideration the fact that so much of the front coal had been mined out of Cumberland township?

A. Well not particularly, of course, the facts in the case is that they have only got started.

Q. They have been mining for a few years?

A. Yes sir.

Q. And they have mined some of the coal?

A. That is true. Of course the difference between this coal here is that there is no active coal and that is the penalty for mining.

Q. The penalty is if they have active coal they are assessed on different basis? You knew the exact amount of

coal that was removed by Crucible Fuel Company and other companies?

A. I do not recall.

Q. In your determining you did take that into consideration?

A. It was talked and thought over I don't know how much bearing it had.

Q. You are chairman of the board?

A. Yes.

Q. How much bearing did it have with you?

A. Very little, if any, they figure they have 60 years of coal yet.

Q. Who?

A. Buckeye Coal Company.

Q. You added something to the rest of the unmined [fol. 68 a] acreage to make up for what had been removed?

A. I suppose the valuation of the township is increased somewhat by the coal mines.

By Mr. Kyle:

Q. Mr. Scott did you say to me you did not want the valuation of Cumberland township to fall any and you were going to increase it all over the township to make up for what was taken out?

A. I will say this for your benefit it would be ridiculous for the valuation of coal in that township to become less.

Q. And you would not want it to become ridiculous?

A. Yes, that would be very poor business.

Paul Debolt sworn as if on cross-examination.

By Mr. McClay:

Q. What is your business?

A. County Commissioner.

Q. Any other business?

A. Yes.

Q. What is it?

A. Filling station and tire repair shop.

Q. How long have you been County Commissioner?

A. About 4 years.

Q. Is this your second term?

A. First term I was appointed to fill a term and this term elected.

Q. What knowledge have you Mr. Debolt as to the values [fol. 69 a] of coal properties in the County of Greene?

A. I have some knowledge of it I went through with one triennial assessment.

Q. You were through the 1925 assessment?

A. Yes, sir.

Q. In making that assessment I suppose you thought what you did was for the best of the County?

A. Yes, sir.

Q. In making the 1928 did you take into consideration the 1925 assessment?

A. Not altogether.

Q. But you did to some extent?

A. Yes.

Q. To what extent?

A. To the extent that things I thought went on in 1925 that was not right I tried to right that at this time.

Q. What was that Mr. Debolt, what was wrong about it?

A. The coal in some of the townships at that time I didn't think was right.

Q. In what particular?

A. Well in Greene Township.

Q. What happened there?

A. I didn't think it was right in 1925.

Q. What was not right?

A. It was not high enough in proportion to townships around it.

Q. In other words Monongahela township and Greene township, Monongahela fronting on the river there was only a difference of $75.00 per acre in your opinion?

[fol. 70 a] A. Yes, but there was Dunkard township on the South was $250.00 and Greene township was $160.00, Cumberland township on the North was $250.00 and Jefferson township behind it at $250.00.

Q. I ask you to look at Exhibit B and point out to me whether Jefferson township does not front on the Monongahela river?

A. Yes and comes in behind Greene.

Q. Any part of Greene fronting on the river?

A. No, no part of it.

Q. In front of Greene you have Monongahela?

A. Yes, sir.

Q. What operations are there?

A. Monessen Coal and Coke and Poland is down there in the south and some other operations in the front.

Q. The Monessen Coal and Coke Company is the Pittsburgh steel?

A. I am not sure about that.

Q. Aren't you mistaken about that?

A. I think that is correct.

Q. Why did you raise the coal in Greene township from $160.00 an acre to $225.00, a difference of $65.00 an acre, and where did you get the information upon which to adopt that valuation?

A. Principally by location.

Q. What appealed to you in the matter of location?

A. If Cumberland, Dunkard and Monongahela were right Greene was way low.

Q. Suppose the rear of Cumberland which you compare [fol. 71a] with Greene, was all wrong, what would you say?

A. I think it was wrong.

Q. The Youngstown Sheet and Tube Company were operators weren't they?

A. Yes.

Q. You know the amount of active coal immediately surrounding their works?

A. Yes.

Q. You know the amount of their holdings?

A. Approximately yes.

Q. Their mines are all opened up and you assessed Cumberland Coal Company in the rear of Cumberland township as much as you assessed the Youngstown Sheet and Tube Company along the river front?

A. The Youngstown Sheet and Tube Co. have coal in the rear of Cumberland township.

Q. How much?

A. Pretty good block.

Q. What about the front coal of the Buckeye?

A. The most of the coal is in the front.

Q. You have assessed the rear coal and their own coal surrounded by the company on the same basis as you assessed the coal along the river?

A. The coal in Cumberland township is all assessed at the same price.

Q. You don't know what that would sell for at public sale after due public notice?

A. Not exactly I have an idea.

Q. Upon what did you form your opinion? Did you consider all the coal within certain limits in the township of [fol. 72a] the same value? Was that your opinion?

A. May not.

Q. What do you mean by that Mr. Debolt?

A. Approximately of the same value.

Court adjourned until 9:00 A. M. Tuesday morning.

Court convened at 9:00 A. M. Tuesday morning.

Mr. Paul Debolt on the stand.

By Mr. McClay:

Q. Mr. Debolt I asked you yesterday whether you considered and determined that all the coal in Cumberland township was of equal quality and value?

A. Yes.

Q. Yesterday in reply to my inquiry as to why you raised the value of Greene township you said you took into consideration Dunkard and Jefferson and that Jefferson laid behind Cumberland and it was appraised at $250.00 and Dunkard at $250.00 and you thought that was unfair?

A. I think I said considering Monongahela in front, Cumberland on the North and Dunkard on the South and Jefferson behind it, I considered Greene was too low.

Q. Taking into consideration the construction of a railroad along Ten Mile Creek, which cuts Jefferson right in two and affords it an opportunity to get its coal out both to the river and to the railroads did you take that into consideration?

[fol. 73 a] By Mr. Waychoff: Objected to for the very good reason at the time this assessment was made there was no such railroad the contract had not been let for its construction.

By the Court: Overrule objection, note exception and seal bill for appellees.

Q. Did you take that into consideration?

A. Did not.

Q. You knew a railroad was contemplated along Ten Mile Creek?

A. Yes, I think one along Whiteley Creek too.

Q. Did you take into consideration that the coal of the Shannopin Coal Company in Dunkard township had embraced in its value a right of way to the Monongahela river along Dunkard Creek?

A. No, sir, I did not.

Q. That would be part of the value of about 14,000 acres of coal in Dunkard township would it not and enhance it very greatly?

A. I suppose they arranged for a right of way to the river when they bought the coal.

Q. Did you take into consideration in the valuation of the coal in Cumberland township the fact that the rear coal had no communication with the river and that it belonged to different owners than the front coal?

A. The understanding that I had that the Cumberland Coal Company had a way to the river, they are in two townships.

Q. What townships?

[fol. 74 a] A. Morgan and northern part of Jefferson.

Q. Did you take into consideration in making the valuation of the virgin coal that there were no openings on it?

A. Yes, I knew there was no operations on that block of coal.

Q. And that all the Monongahela township coal was open along the river?

A. Yes.

Q. Did it make any difference to you whether the coal was opened or not opened?

A. The coal that is opened is more valuable.

Q. Did you give it a matter of serious consideration to determine when the virgin coal would be opened or not opened?

A. That part I don't know nor I don't think any one else knows.

Q. You did not consider the fact that the Cumberland Coal Company might be in your county for 50 years?

By Mr. Waychoff: This is objected to as setting a basis that is not a correct standard or nothing to do with it, it may develop its coal at once or 50 years from now and has nothing whatever to do with the basis at this time.

By the Court: Overrule objection for the present, note exception and seal bill for the county of Greene.

Q. Right back of Cumberland township and Greene township is Whiteley?

[fol. 75 a] A. Yes.

Q. You have appraised all of Cumberland township at $260.00 an acre, Greene $225.00 and Whiteley at $90.00 an acre?

A. Yes sir.

Q. Will you give us the reasons why you made that difference in valuations?

A. The difference in Whiteley from the others is it is farther from operations is the principal reason.

Q. What difference did that make, it is the same quality of coal isn't it?

A. Yes, but would be longer getting to it and harder to get to, there is no transportation facilities.

Q. You make a difference there of $135.00 per acre between the coal lying in Greene and Whiteley townships just across the line?

A. Whiteley compares with the townships on the North and South of it.

Q. You took Wayne township appraised it at $85.00 per acre throughout the township against Whiteley?

A. That is still farther from the river and only $5.00 difference made there.

Q. It is the next township back and south of it?

A. Yes.

Q. What did you consider Mr. Debolt in determining that valuation?

A. The market value.

Q. What market in Wayne township did you have for coal in the past three years? Any bought and sold in the last three years.

[fol. 76 a] A. I think there was some.

Q. What?

A. I think a block the Denny heirs were interested in.

Q. Dennys of Pittsburgh?

A. No the ones here.

Q. Do you know what they got for their coal?

A. I understood $225.00 per acre.

Q. When was that bought?
A. In the last year I think.
Q. Is it closed yet?
A. I don't know.
Q. Is that the only isolated place you know of?
A. Yes.
Q. You did not take that one sale as the evidence of the true value throughout the township?
A. As to the values that have been on the coal in the past.
Q. The Denny piece to which you refer is in Franklin township?
A. Yes.
Q. Where is Franklin with respect to Wayne?
A. I think directly North or little Northeast.
Q. This piece is four or five miles from the Wayne township line?
A. Yes.
Q. While back of Wayne township you have assessed Jackson township at $30.00?
A. Yes.
Q. Why did you assess a tract of coal adjoining the [fol. 77 a] township line of Jackson at $85.00 and a tract of coal within Jackson township lines at $30.00?
A. The distance from transportation facilities. Wayne township has a railroad there on the south of it.
Q. Wayne township has a railroad there on the south of it? What railroad is that?
A. Scott's run I think, comes up to Brave.
Q. Comes from where?
A. From the River up to Brave.
Q. Where does it strike Wayne Township?
A. Southern side of it.
Q. How many cars does it haul?
A. Not so very many but it could be fixed so it would haul more.
Q. It only hauls one freight car at a time?
A. I don't know.
Q. Do you know anything about the grades on that railroad?
A. I don't think it is a first class railroad.
Q. Do you know anything about the grades?

A. No.

Q. You do know they are pretty heavy?

A. No.

Q. Were you ever over that road?

A. No sir.

Q. Have you ever been over that coal field?

A. Yes sir.

Q. Now Perry township lies back of Dunkard and in front of Wayne and you assessed that at $110.00?

A. Yes.

Q. On what basis did you do that?

A. The distance from transportation facilities and on an [fol. 78 a] equal value between Wayne township and Dunkard township.

Q. What elements entered into your consideration of the values in Perry township that were not present with you in Wayne Township?

A. As I said before the distance from the transportation facilities taken into consideration.

Q. You are not a railroad man?

A. No sir.

Q. You don't know anything about the cost of construction of railroads?

A. I know something about it.

Q. What?

A. As much as the average man.

Q. The average man knows nothing about it?

A. He knows something.

Q. What do you know about this one?

A. Costs a good bit of money.

Q. How much a mile?

A. I don't know.

Q. You don't know the cost of sinking a shaft do you?

A. No.

Q. Have any conception of what it would cost sinking a shaft 400 or 500 feet deep?

A. Depend on how deep it was to the coal.

Q. Do you know how deep Wayne township coal is below the surface?

A. Not exactly.

Q. What would you say substantially?

A. I would say 500 feet, may be not that deep, it is on that side where it is not so deep.

Q. Gilmore you know the location of that?

A. Yes.

[fol. 79 a] Q. You assessed that at $40.00?

A. Yes.

Q. The railroad to which you referred a few minutes ago runs into Gilmore?

A. No it does not.

Q. How far from the line does it run?

A. Not so far from the border.

Q. Would you say half a mile?

A. I don't know how far Brave is from the border.

Q. Is that the nearest point?

A. Yes.

Q. It runs towards Jackson township?

A. No sir.

Q. I suppose the same consideration entered into your determination of the value of Gilmore township?

A. Yes.

Q. You also assessed Center which adjoins Franklin and Wayne at $50.00?

A. Yes.

Q. That is not any farther back from the river than Wayne is it?

A. No, but it is farther from a railroad.

Q. Is it farther from the river?

A. About the same distance.

Q. Why should you allow a difference of $35.00 an acre on that?

A. Not as accessible as Wayne township.

Q. Why?

A. Not as near to a railroad.

Q. And the railroad is that Scott's Run railroad?

A. Yes.

[fol. 80 a] Q. Do you know where the Chartiers Southern Railroad ran?

A. I think I do.

Q. And this new railroad ran right through the middle of it didn't it?

A. I don't know anything about where the Chartiers run in Center township.

Q. The Chartiers Southern runs from the River along Ten Mile Creek and follows Ten Mile Creek to Waynesburg?

A. It comes to Mather and is under construction from Mather to Waynesburg.

Q. Waynesburg is but a short distance from Center township?

A. Not very far.

Q. So near that anybody who owns coal in Center township will not have a great deal of expense to bear in constructing a road to join the Chartiers Southern?

A. This railroad that is under construction was not contracted for or under construction when this assessment was made.

Q. When was it begun?

A. I don't know.

Q. When was the survey made?

A. I don't know that.

Q. You know it was a matter of public common knowledge the railroad was going to be built before the contracts were given out?

A. I heard a good bit of talk.

Q. You know that enhanced the value of coal?

A. Yes.

[fol. 81 a] Q. And this assessment was to last for three years?

A. We did not know that railroad was going to be finished when we assessed this coal. I knew it was commonly talked of but did not know whether it was going through. We talked for a long time about that railroad but did not know whether we would get it or not.

Q. What township is Mather in?

A. Morgan township.

Q. Now you have assessed Morris township the same as Center. What entered into your consideration of assessment there?

A. We thought that coal was of about the same value as Center.

Q. Mr. Scott in his testimony yesterday stated that Greene County coal would not likely be shipped over the railroads, but transported by river, how does the Youngstown Sheet & Tube Company get its coal?

A. I think by rail. They have facilities for the river, but I understand their coal is used on the railroad.

Q. Youngstown, Ohio, is considerable dis- from the river and they could not get it?

A. Yes sir.

Q. In valuing this property you kept in mind that the statute provides you must arrive at a price that it must bring at public sale after due public notice?

A. Yes.

Q. Did you take into consideration the market for the coal in these various townships?

[fol. 82 a] A. I think we did.

Q. What market has there been in the last three years?

A. Sales in Cumberland township in the back end what we call the Garard sale I think was around $600.00 or $700.00, I don't know exactly.

Q. You don't have any actual knowledge of that sale?

A. No sir.

Q. In your determination of these values, taking the surface, did you make any difference in the surface lying in Wayne township and that lying in Gilmore township?

A. Not much.

Q. You valued that at about the same proportion?

A. Yes.

Q. You did make a marked difference of $45.00 per acre in the coal?

A. Yes.

Q. Mr. Debolt you raised the valuations in Greene township?

A. Yes.

Q. You raised them in Wayne and what other townships over what they were the preceding three years?

A. In Greene township the assessment was left at what the assessor put it. In Wayne Township I think it was the same.

Q. In other words there was an appeal taken from the decision of the assessors to you?

A. Yes.

Q. You sustained the assessment?

[fol. 83 a] A. Yes sir.

Q. Do you know whether the township authorities had anything to do with you raising the assessment?

A. No sir the township authorities had nothing to do with our value.

Q. Did they make any suggestion about the valuation?

A. No sir.

Q. The assessors made their report to you?

A. Yes.

Q. We appealed from the report of the assessors to you as a Board of Revision?

A. Yes sir.

Q. You acted upon that and made this assessment?

A. Yes sir.

Q. Did the supervisors, or anyone connected with the township, have anything to do with the raising of these assessments?

A. None whatever.

Q. Mr. Deboit what other veins of coal are there in Cumberland township and Greene township, Jefferson and Dunkard townships, than the Pittsburgh or River vein?

A. They have what you call the Mapletown vein some places, called the Sewickley vein, that is about all there of any value.

Q. Do you know of the Kittanning vein?

A. I do not.

Q. Do you know of the Freeport vein?

A. Yes that is below the Pittsburgh.

[fol. 84 a] Q. You did not make any assessment of the Freeport?

A. No sir.

Q. Did you of the Kitanning?

A. Don't know what you mean by the Kittanning.

Q. What assessment did yon make of the Sewickley?

A. Some in Monongahela township that is about all the place it is taken into consideration.

Q. What coal did you assess in Monongahela township?

A. Sewickley vein.

Q. You did not assess it in any other township except where it was actually being produced?

A. Yes.

Q. You owned some of this coal didn't you?

A. I had an interest in an estate that had some coal.

Q. That was assessed at how much?

A. It was never severed it was not assessed.

Q. After it was severed what was it assessed at?
A. It was severed when it was sold.
Q. How much after it was sold was it assessed at? When did you sell your interest in that coal?
A. I don't know the exact date.
Q. About the date?
A. Some time in 1928?
Q. How much did you get for that?
A. Sale price $550.00.
Q. How many acres in that tract?
[fol. 85 a] A. 112 sometimes like that.
Q. Before that never was assessed?
A. Never had been severed from the surface.
Q. Is it assessed now?
A. I thing it is.
Q. What at?
A. I don't know.
Q. The assessor made the assessment?
A. Yes.
Q. You approved the assessment?
A. In a way.
Q. Is it assessed at any sum in excess of $100.00 per acre?
A. I don't know.
Q. That value was put on there by the assessor afterwards.
A. That sale has not been made until after the assessor had made his return.
Q. As far as you know it is not assessed at all?
A. I think it is.
Q. As far as you know it is not assessed?
A. I think it is.
Q. What other coal besides the Sewickley vein of coal had you any knowledge of?
A. Other coal in Monongahela township.
Q. What is that assessed at?
A. Different prices.
Q. Any assessed at $250.00 per acre?
A. Yes, the active is assessed at $250.00.
Q. How much do you allow around the pit mouth?
A. I think 100 acres.
[fol. 86 a] Q. Do you know anything about a tract of Sewickley coal known as the Minor tract?

A. Yes.
Q. Do you know that adjoins the Debolt tract?
A. Yes.
Q. What does that sell for?
A. Surface and all I think $650.00 an acre.
Q. What was the surface worth?
A. $60.00 or $70.00 an acre.
Q. Was that assessed before the severance?
A. Those sales were made at the same time.

By Mr. Waychoff: Objection to anything prior to 1928.

Q. When was that coal sold?
A. I think Debolt and Minor at the same time in 1928.
Q. What time?
A. In the winter sometime.
Q. When did your Board of Commissioners begin to meet for the approval or disapproval of the assessors?
A. I forget the date we took the oath to sit on the Board of Revision.
Q. When do you think?
A. In March sometime I might be mistaken.
Q. You did not finally decide until in July?
A. I forget what date. I think it was April 26th I think that was it.
Q. In assessing the Sewickley vein of coal did you assess it at 50% of its value?
A. There is not much known about the Sewickley coal you cannot make a thorough assessment, some places there are [fol. 87 a] not any and it has faults in it and there is not enough known about it to make a general assessment of it.
Q. You did not take into consideration the ascertainment of its actual value and then deduct 50% from it?
A. No.
Q. You did not consider the ratio at all?
A. We thought we were assessing it at 50% of its value.
Q. This sale the Debolt and Minor sale was kind of a key to some other coal, more than one company holding it and it went higher than any of the other coal around there that had been sold?
A. Yes.
Q. Do you know where the Mestrezat farm is?
A. Yes.
Q. Do you know whether that coal was sold?

A. Yes, I think it was.
Q. What was that coal sold for?
A. I don't know.
Q. Do you know the Barb tract in Monongahela?
A. Yes.
Q. Do you know what that brought?
A. $700.00 per acre. That was to get a water way through to the creek and they had to have it.
Q. Do you know the Crawford tract, the one that adjoins your farm?
A. It adjoins the Minor tract and that adjoins ours.
Q. What was that sold for?
[fol. 88 a] A. I don't know.
Q. You don't know what that brought?
A. No sir.
Q. You don't know what it is assessed at?
A. No sir, those sales were so late the assessor did not get hold of them.
Q. Before that time they were not assessed at all?
A. No they were not severed from the surface.
Q. The Barbe tract was sold in 1927?
A. I think it was.
Q. C. A. Mestrezat sold in 1927?
A. I think it was not sold it is being operated on a royalty basis. We own the half of it, we sold that in May, 1927.
Q. There is 100 acres of the C. A. Mestrezat tract that is assessed at $250.00 an acre that is mined on a royalty?
A. The C. A. Mestrezat I think it is.
Q. $250.00?
A. Yes, sir.
Q. Would it make any difference to you if I said to you the other half was sold at an actual value of $200.00 per acre surface and all?
A. It might have been sometime ago.
Q. In May, 1927?
A. I don't know that.
Q. Would it make any difference to you?
A. We did not make any extensive study to assess that because there was not much known about that coal there.
Q. Is there any Sewickley coal in Dunkard township?
[fol. 89 a] A. I think there is.
Q. Is that assessed at all?
A. None of it severed.

Q. Isn't there any Sewickley coal in Whiteley or Franklin township?

A. That is not assessed at all.

Q. Is there in Perry and Wayne?

A. Not much known about it.

GEORGE S. BATON sworn.

Direct examination.

By Mr. Kyle:

Q. Mr. Baton where do you live?

A. Pittsburgh, Pa.

Q. What is your business?

A. Consulting mining engineer.

Q. How long?

A. Since 1895.

Q. What mining operations in Greene County have you supervised the construction of?

A. Mather, Shannopin and was consulting on some of those plants on Ten Mile creek.

Q. What operations in Greene County are you now employed as consulting engineer?

A. Pittsburgh Steel, The Mather-Collieries and Jones and Laughlin.

Q. Jones and Laughlin are the operators of the Shannopin?

A. Yes.

Q. And Pittsburgh Steel is the owner of the Monessen Coal Company?

A. Alicia mine yes.

[fol. 90 a] Q. What experience have you had in the purchase and sale of coal lands in Greene County?

A. My experience in this district dates from 1895. I have been more or less connected with the development of the district. When I first came into the district the coal was being developed in Westmoreland and Eastern part of *of* Fayette County and then the development moved westward into the western part of Fayette County and then across the river into Greene County. The development was very fast at first. You see these five counties in the southern——

By Mr. Waychoff: The County of Greene objects to the witness testifying to any concrete thing at this time until he qualifies as an expert witness.

By Mr. Kyle: Withdraw that question.

Q. What knowledge have you had as to the purchase and sale of pieces of coal lands in Greene County?

By Mr. Waychoff: We object to the question unless it confines the time of his experience and knowledge of prices and market value and purchases and sales to a time not very far prior to the assessment in this case.

By Mr. Kyle: We propose to follow this question with other questions bringing this witness's testimony down to date.

[fol. 91 a] By the Court: Overrule objection for the present, note exception and seal bill for appellee.

A. In my answer to this I wanted to show how the development came to Greene County, so as to bring out the present conditions in Greene County. I have been reporting on coal properties in Greene County for proposed purchases for the last 20 years.

Q. Has your activity along that line continued to the present time?

A. It has.

Q. From your experience as a consulting engineer, and your knowledge of purchases and sales of coal lands in the past and continuing up to the present time, do you consider yourself qualified to express an opinion as to market value of coal lands at the present time?

A. I do.

Cross-examination.

By Mr. Waychoff:

Q. Mr. Baton you said that you for 20 years had been reporting on proposed purchases of coal?

A. I did.

Q. What did you mean by that?

A. My consulting capacity has always been with the purchaser of the coal. I never report on property for the owner of coal lands. I report for the proposed purchaser or bank that is loaning money.

Q. What do you do?

[fol. 92 a] A. Get the quality of the coal and the cost of developing it and also about the value.

Q. What value?

A. The price the market price. For instance property is offered to a purchaser at a certain price, I report on whether that price is reasonable.

Q. What do you take into consideration in making up your report whether it is reasonable?

A. We take into consideration the location and quality of coal and other sales of coal similarly located.

Q. What effect on it does the other sales have in your judgment?

A. It has a great effect.

Q. Then I understand you are asserting that your knowledge of coal, purchases and sales in Greene County and the prices at which the sales were made in your opinion qualify you to express an opinion as to the value of coal generally in Greene County?

A. I think so.

Redirect examination.

By Mr. Kyle:

Q. Mr. Baton you have a general knowledge of the relative values of coal in Greene County on the river front and coal lying back from the river front, relative to values I should say?

A. I think I have Mr. Kyle.

Q. I show witness map marked Exhibit B and I will ask you Mr. Baton if you are familiar with the locations of the holdings of the Cumberland Coal Company in Cumberland township?

A. I am.

[fol. 93 a] Q. Are you familiar with the location in Greene Township?

A. I am.

Q. Will you state what in your opinion is the relative or comparative value of coal belonging to Cumberland Coal Company in Cumberland township as compared to the coal fronting on the river in said township and owned by Crucible Fuel Company, Pittsburgh Steel Company and Buckeye Coal Company?

By Mr. Waychoff: That is objected to in the absence of testimony from the witness that he knows or has known of purchases and sales in Cumberland township in the neighborhood in which he is asked to value this coal or show its comparative value.

By the Court: Objection overruled, exception noted and bill sealed for appellee.

A. About one-half.

Q. What is your estimate of the relative value of coal in Greene township as compared with the coal in Monongahela township?

A. About one-half.

Q. What in your opinion would the holdings of Cumberland Coal Company in Cumberland township sell for after due notice at public sale?

By Mr. Waychoff: That is objected to as asking for a conclusion from the witness the question being what is the market value.

[fol. 94 a] By the Court: Objection overruled, exception noted and bill sealed for appellee.

A. At the present time I don't believe there would be a purchaser.

Q. That is the whole block?

A. Yes, sir.

Q. State why you arrive at that conclusion Mr. Baton?

A. At the present time the coal industry in southwestern Pennsylvania is practically at a stand still and most of the properties can be bought at much less than their value considering sales that were made five years ago.

Q. Have you made a study of the causes leading up to this situation?

A. I think I have.

By Mr. Waychoff: Objected to as irrelevant and immaterial.

By the Court: Overrule objection, note exception and seal bill for appellee.

Q. State what are the causes bringing about this depression in the coal business and consequent reduction of market value of coal of these appellants?

A. In the first place the consumption of coal up to ten years ago increased almost ten percent a year. Since then

there has been no increase in the consumption of coal. The development before that moved toward Greene County, since then the development has been in southern West Virginia, [fol. 95 a] so that the development in Greene County has ceased; that was caused by cheaper coal lands, lower labor rates and lowering of taxes in West Virginia. The result has been there has been practically no sales of coal lands in this county for some time and the railroads have given lower freight rates to the mines in the south, so that unless something is changed I think there will be a continuance of a depression of the purchases in this district. I think that instead of any raise in the assessment in Greene County in the last five years there should rather have been a lowering of the assessed value because the coal is actually worth less that it was.

Q. Mr. Baton you heard the testimony of Mr. Scott, County Commissioner, yesterday with reference to taking this coal out by the belt system have you knowledge of the belt system in taking coal out?

A. Yes.

Q. What would you say as to the practicability of the removal of the coal of the Cumberland Coal Company in Cumberland and Greene townships by the belt system?

By Mr. Waychoff:

Q. Does your engineering experience extend to mechanical engineering of that kind Mr. Baton?

A. It does.

A. The length of the time before the coal owned by the Cumberland Coal Co., can be conveyed to the river is so great that it just has a small effect on the value of the coal at the present time.

[fol. 96 a] By the Court:

Q. Do the prospects of it being taken out by the belt system have any effect on it at this time?

A. I think not, it is so far back from the river.

By Mr. Kyle:

Q. What do you mean by the length of time?

A. It takes about three or four years to drive entries in the mine a mile and this coal is five miles back and it could

be twenty years before they could get the entries in to bring that coal out.

Q. Mr. Baton it would seem from the valuation placed upon the coal land by the County Commissioners that they have graduated the prices from the back end of Cumberland township, and Greene township running back through the county, will you state your opinion of the graduation of those values, that is, placing a valuation of $260.00 on the Cumberland township coal at the river front or $300.00 on the Monongahela township coal? What would be the relative value of coal as far back as Wayne township?

A. In the first place I feel that Cumberland township is too big to be properly included in one zone and the front half of Cumberland about parallel with the back line of Monongahela township should be one zone and the rear part of the township another zone. My idea is that if you make zones about three or four miles wide starting at the river and going westward you would have a better division than taking the townships themselves as a unit. In a general way I think [fol. 97 a] that the units ought to go 300, 150, 75, about half on account of a four miles distance. On account of the distance from the development.

By the Court:

Q. Mr. Baton did you ever notice the fact in examining this map that between townships, showing the township lines, it is divided into about four zones?

A. Yes.

Q. Following the line of Monongahela, Cumberland, Jefferson, Greene and Dunkard townships seems to constitute a zone line on the map according to the way the taxes have heretofore been assessed?

A. Yes, I notice that.

Q. Washington, Franklin, Whiteley and Perry are in the next line of townships?

A. Yes.

Q. You have said that the zones ought to be divided into zones of three or four miles in width?

A. Yes, I think it does not seem fair to put coal that is six miles back from the river on the same basis of coal that was within two miles.

K. Of course you realize that wherever a zone is established the coal on one side will have a greater value than on the other side?

A. Yes, but the smaller the zones the less they jump.

Q. Do you think the proximity of the West Virginia railroad on the south and west would have something to do with that system of zoning the township?

A. Judge the way I feel about the railroad development [fol. 98 a] at present is that under the present disadvantage we have in freight rates there is to be little or no development of coal lands in this part of the state. For instance you take the extension of that railroad from Mather to Waynesburg, if that had occurred ten years ago there would have been numerous developments over it, but with freight rates as we have now no one can afford to open up a mine and go into extensive coal business. Take for instance Mather mine. They opened up that mine and intended to ship it to Toledo, but they cannot ship any of that coal there on account of the quality of the coal and on account of its cheapness, so in my opinion until the conditions change in this part of the state there is no use to build railroads expecting to operate coal.

Q. In other words there is no use taking the prospective railroad into consideration in operating coal mines?

A. I don't think so at the present time.

By Mr. Kyle:

Q. What in your opinion would the coal in the western half of Perry township, that is the coal owned by these appellants in Perry township sell for at public sale after due pub- in separate tracts?

A. I don't think there would be any sale for it.

Q. You could not sell it?

A. Somebody might pay something for it.

Q. What do you say about Wayne township, what is your opinion as to the value of coal in Wayne township, what [fol. 99 a] would it sell for at public sale after due notice in separate tracts?

A. Might sell as high as a hundred dollars, but I don't think anyone would pay that much for it.

By the Court:

Q. Do you think anyone would be willing to pay that much for it?

A. I would not think so Judge. At this present time we are working on a map in the adjoining counties in West Virginia to see whether we can pick out pieces of coal that will in a measure control the coal field and let the rest go for taxes

Q. That is the situation in West Virginia?

A. Yes.

Q. I am doing that for three or four companies at this time.

By Mr. Kyle:

Q. The answers you have given with reference to values Mr. Baton apply to the spring of this year as well as to the present time?

A. It does.

Recross-examination.

By Mr. Waychoff:

Q. You say in West Virginia you are working on maps trying to pick out certain blocks or pieces of coal that will control the whole situation and surrender the rest for taxes?

A. I did.

Q. Why are you keeping control?

A. We cannot afford to pay taxes on the whole tract and [fol. 100 a] we have money invested and we are endeavoring to reduce the carrying charges and still be able to take advantage of anything that may happen in the future.

Q. You are undertaking to avoid the payment of the running share of the township in which the coal is situated and still keep the coal in control?

A. Well we are giving up the property that we paid money for, letting someone else have it that wants it that is what we are doing.

Q. I understood you to say that you were keeping certain parts?

A. I said we were attempting to make a study of that.

Q. You say Wayne township coal might sell as high as $100.00.

A. It might.

Q. Perry township there would be no sale for?

A. That applies to Wayne too I would put the same value on both of them.

Q. When you say there is no sale for coal in Wayne township or $100.00 might be the proper price do you consider the fact that a great deal of the coal in Wayne township in the last three or four years have changed hands at $285.00 an acre?

A. Sure, I was consulting engineer on those purchases.

Q. The coal you would advise the purchase of at $285.00 per acre, plus the commission to brokers, etc., three or four years ago you would not advise at $100 an acre now?

A. I would not.

[fol. 101 a] Q. The intrinsic value is the same?

A. Yes, but conditions have changed so that in my opinion the owners must hold it a great deal longer before he realizes on his investment.

Q. And when he does realize what is your opinion about the value then?

A. I think the coal has great value, intrinsic value.

Q. What in your opinion is the intrinsic value of that coal in Wayne township per acre?

A. I should think the intrinsic value is as great as an acre of coal in Jefferson township.

Q. How much is that?

A. I don't know how to state it in dollars and cents.

Q. Yet you can say that $300.00 for the first few miles from the river is the assessed value and four miles back would not be worth more than $150.00 and when you get 6 or 8 miles back $75.00.

A. Yes.

Q. Do you realize what that would assess the coal for in Gilmore township?

A. It would be practically nothing and in my opinion at the present day it is worth nothing.

Q. Do you know the railroad that is now being built to Waynesburg is projected through the edge of Richhill Township?

A. Yes.

Q. Does that affect your idea of that coal as nothing?

A. No.

Q. Do you know anything about the intrinsic value of coal in Richhill township?

[fol. 102 a] A. I own coal myself in Morris and have owned it for thirty years.

Q. Inasmuch as you have told that, how much did you pay for it thirty years ago?

A. $30.00.

Q. Do you know anything about the intrinsic value in Richhill and Morris townships?

A. I think so.

Q. Is it as good as Jefferson and Wayne?

A. It is thinner coal some of it has as good even better analysis.

Q. Have you taken that into consideration when you say you valued it at nothing?

A. I have.

Q. Have you taken into consideration the projected railroad from here to Wheeling when you say it is worth nothing?

A. I know in the adjoining county, Washington County, some New York and Chicago interests have coal that they bought for $100.00 or more per acre and endeavored to sell it in the last year at $25.00 and I understood it is going to be disposed of at $18.00 in this month.

Q. Isn't all that trouble caused by the very serious slump in the coal business here at the present time in this district?

A. Yes, but they will ship from the south instead of here.

Q. If the strike that is going on between employees at various companies were to be equitably settled today that would all be settled would it?

A. I do not think so.

Q. That is just a temporary matter?

[fol. 103 a] A. I am not so sure about that.

Q. What is your reason as to whether or not it is not a temporary matter?

A. We have been fighting these freight rates for 15 years and have not succeeded in having them adjusted. Today the coal is moving from Kentucky and southern West Virginia for about half per ton mile less than it is moved from Greene County.

Q. How long has that been in existence?

A. Probably since the war.

Q. Ten years?

A. Yes.

Q. You say they are not sending their coal to the Toledo plant. Where do they send it?

A. Steel Company of Canada at Hamilton, also to Erie; they run regularly and almost full time. The mine was developed for a capacity of about 5000 tons, and runs about 3400 simply because they have not a market for more coal.

Q. Do you know whether or not that has been increased as the years go by?

A. No, when the Mather mine was put in we had two hoist shafts, expecting to use both of them. The second one has not been used because there never was the call for it.

Q. Does your experience as an engineer extend over more than Greene County?

A. Yes, I am at present operating a mine in Westmoreland, Fayette and Washington counties.

Q. Are you acquainted with developments in Washington County?

A. Yes.

Q. Is it by townships as in Greene?

[fol. 104 a] A. Yes.

Q. Are you acquainted with the method of assessments as in Fayette County?

A. Yes.

Q. Is it in townships as in Greene?

A. I think so.

Q. In Westmoreland, are you acquainted?

A. I am.

Q. Is it by townships as in Greene County?

A. Yes I should say it was.

Q. Do you know of any county in the state of Pennsylvania where the zoning system which you recommend has been adopted?

A. I don't know of any county similarly situated to Greene County.

Q. Do you know of any county in the United States that should be zoned as you say Greene County should be zoned?

A. I don't know of any.

Q. Do you know in your experience that the Greene County coal has largely been sold upon township lines?

A. I never knew the township lines had anything to do with it.

Q. You never knew that in the purchase of coal by the coal companies they would pay certain definite prices for

Greene township coal and again across the line in Cumberland and Jefferson.

A. No.

Q. Do you say the coal in Cumberland township is worth less than the assessment $260.00 an acre. I mean by the criterion here established the market value. The market [fol. 105 a] value at public sale after public notice with a willing purchaser and willing seller?

A. I understood it was assessed at half its value.

Q. Do you regard $260.00 an acre is above the value of the coal at public sale after public notice with a willing purchaser and willing seller?

A. I don't think you could sell a tract in the western portion of that township at that price if sold publicly.

Q. Does not that arise principally because the Cumberland Coal Company have cornered the market and fixed it so it is the only buyer and the only person that can ever take that coal out?

A. There is evidently a sufficient amount to be developed. This coal is deep, therefore very expensive to take out, and it is impossible to take it out unless by a large company.

Q. In other words the correct answer to my question is that the Cumberland Coal Company has so purchased the coal and so managed the affairs at the present time that there could be no other buyer for a piece of coal on account of the possibility of taking it out?

A. In my opinion any tract of coal which lies in the western part of Cumberland township would have to be sold at $200.00 or $250.00 an acre.

Q. And to get that you would have to buy it from the Cumberland Coal Co.?

A. There is one piece there.

Q. Do you know anything about it?

A. I think it belonged to the Youngstown Sheet and Tube Co.

[fol. 106 a] Q. You are the consulting engineer for the Cumberland Company?

A. No sir.

Q. You never had anything to do with the trade attempted to be made by the Cumberland Coal Company and Buckeye Coal Company that is marked in white on the plot there?

A. No sir.

Q. You were never asked about that exchange and the reason why it was not carried out?

A. No sir.

Q. Do you believe that your method of assessment there by zones three to four miles back to drop from $300 to $150.00 would be more equitable than they do now going back six miles before they drop?

A. I think so.

Q. Do you think there is a vast difference in the price of coal two miles away?

A. I think the extra cost of hauling coal would make the coal of less value over three or four miles from the river than the coal in front of it?

Q. You mean to tell me the cost of hauling the coal between three miles and six miles would depreciate it one-half?

A. I think it would cost $1000.00 more an acre to haul it.

Q. You think coal three miles from the river the extra cost of hauling it about two miles farther would depreciate it one-half?

A. What were we talking about three miles, three or four miles or six or eight miles.

Q. You think the difference between four miles back and [fol. 107 a] six miles back would cost *a* $1000.00 an acre for hauling the coal?

A. At least.

Q. That $1000.00 an acre would depreciate the value of coal half?

A. I think so.

Q. I believe you declined to state the intrinsic value of that coal when you got it?

A. I don't know how to get at it?

Q. Don't you believe Mr. Baton that the present method of making about three zones in the county is as equitable and fairly applied as the one you suggest?

A. No, I think it most unfair the farther you get back from the river.

Q. You have testified in the beginning that you have had knowledge and experience with the purchase and sale of coal in this district will you please tell us one of those sales?

A. All of my experience has been more than three years

ago, I have not had any experience with any purchasers in the last three years before that I was consulting engineer on the purchase of the Shannopin.

Q. Don't you know you were asked when you started here and undertaken to be qualified as an experienced witness as to the value of coal in March or early in 1928 and questions asked you referred to thereabout, didn't you know that?

A. Yes, but there is no sales within the last three years that you can judge the present value on. It is altogether a matter of judgment from what was done in the past.

[fol. 108 a] Q. You say there was not any sales in the last three years?

A. Yes with not any magnitude.

Q. What were they all small size?

A. My information with reference to sales in the last few years are hearsay.

Q. Then in the last few years you have not had that experience as to purchases and sales in this district?

A. My experience has been with large areas of coal and that has ceased in the last few years.

Q. Then you are not qualified as to express an opinion in the beginning of the year 1928?

A. I think I know about as much as could have been known.

Q. You are not experienced with the purchase or sale of coal lands?

A. I have been trying to sell some coal lands in the last few years.

Q. Isn't it true Mr. Baton you have coal in Greene County and there is a serious slump and you feel aggrieved because you cannot sell it?

A. I feel worried about the whole County that is true.

Q. You say developments in coal lands in Greene County have ceased?

A. Yes.

Q. When did the Shannopin start to developing coal?

A. About three years ago.

Q. Are they done getting ready to develop the equipment in the mines and proceeding with the building of the plant?

[fol. 109 a] A. I think so.

Q. How many openings do they have?

A. Two openings.

Q. Isn't it a matter of fact they have two more projected, planned and laid out for the near future?

A. They have.

Q. Isn't it a matter of fact they reach back to Perry township with the projected development for the near future?

A. Their life is supposed to be 50 years.

Q. Of what? Life of what?

A. Development there.

Q. Where is this fourth shaft you say is projected for the near future?

A. Taylortown.

Q. It is supposed to take out all the coal in the Shannopin works?

A. I think so.

Q. It reaches into Perry township?

A. Perry is the extreme edge.

Q. Isn't there a piece in Perry?

A. I think not.

Q. Isn't there a piece of it in Greene?

A. If it is it is only a few acres.

Q. To your knowledge is that the only major operation in coal in three years in Greene County?

A. That is all.

Q. Isn't is a fact Mr. Baton that the coal in back townships, one in which you own your coal, is held largely as a speculative venture by the owners?

A. It is.

[fol. 110 a] Q. Isn't it a fact that in the eastern part of Greene County the coal has been purchased by the large companies and held for future development for the benefit of the companies so that their future supply will be taken care of?

A. I think so.

Q. Then the temporary slump at the present time does not affect the ultimate benefit to the owners thereof as it would if it were otherwise?

A. Only a failure of the development has caused the various companies to go elsewhere for their reserve and the companies that would have come into this district have been going to the south for instance the Koppers Co., they have not purchased any coal, although they have extended their business greatly. Their purchases have not been

made this way and if things had been normal they would have come this way.

Q. You mean freight rates?

A. Freight rates and taxes and the coal is deeper. West Virginia has sort of hurt this county.

Q. Isn't their taxation higher than this county?

A. No sir, southern West Virginia they are not.

Q. I mean the counties along here?

A. They are pretty much in the same fix as Greene County.

Q. What counties are they going to abandon on account of taxation?

A. Marshall and Preston Counties.

[fol. 111 a] Q. As a matter of fact what kind of coal is there there that they are going to abandon?

A. Pittsburgh.

Q. What kind of coal, coke or steam?

A. Steam.

Q. What is the thickness of vein?

A. About six feet.

Q. It never approaches the vein in Greene County?

A. In southwestern Greene County it is no better.

Q. In Springhill township it is no better?

A. Great deal deeper and less valuable.

Q. Does it ever approach in any one of the three counties in West Virginia which were named the value of the coal in Greene County from which this appeal was taken?

A. No sir.

Q. What is the comparative value between the two? How many times more valuable is the Greene County coal than the Preston County coal which you have surrendered?

A. I don't know.

Q. Now you say up to ten years ago the production of coal had increased about 10% a year?

A. Yes.

Q. About ten years ago how much did it increase?

A. The production of coal increased up to about 500,000,000 tons and since then the production has not increased a bit.

Q. Before that what was the production?

[fol. 112 a] A. It increased about 250,000,000 in ten years.

Q. Before the war?

A. Yes.

Q. Then it jumped up to 500,000,000 in the year?

A. No it was approximately that high before the war.

Q. Isn't it true that most of the trouble with the coal business here, now and in the past ten years has been caused by the fact there is a great over-production caused by the many mines opened during the war?

A. There was an over-production before the war.

Q. You say you can buy developed properties cheaper where?

A. Washington County.

Q. What part of Washington County?

A. There is the Carnegie Coal Company a few years ago we appraised at $15,000,000.00 can be bought today for $3,000,000. There is the Chartiers Creek Coal Company appraised at $600,000.00 and a controlling interest sold for about $125,000.00, making the coal about $40.00 an acre.

Q. Was that caused by the boom during the war?

A. No, it was the result of the purchaser's judgment they paid more than he could get a proper return for his money.

Q. What kind of coal do they have there?

A. Gas coal and steam coal.

Q. Is either one of them to be compared favorably with [fol. 113 a] the coal in Greene township, Greene County?

A. I think so.

Q. Which one?

A. Chartiers Creek it is drift coal low in sulphur.

Q. How thick?

A. About 6 feet.

Q. How thick is the vein in Greene Township?

A. It might be you could mine seven feet there, but I think it possible to mine between six and seven feet.

Q. Do you mean six feet at the Chartiers?

A. 7 feet.

Q. You say the back end of Cumberland township is not worth one-half the front end?

A. I do.

Q. The only difference in the worth of them is the transportation of the coal?

A. Its location is all the difference.

Q. Isn't it true that the back end of Cumberland township is better quality than the front end?

A. I don't know exactly what the quality of the back end is. No one can say exactly what the quality of the back end is.

Q. What do you say it is? Isn't it a matter of common knowledge that the back end of Cumberland township is of better quality than the front end?

A. I don't think it is.

Q. Have you heard among other engineers of like character that it is?

[fol. 114 a] A. I don't know what parts of Greene County are variable in quality. I don't think you can make a statement regarding such a big area as to the quality of coal.

Q. That the back end of Cumberland township is better quality than the front end?

A. No I do not.

Q. In making your estimate of the value of Greene township did you take into consideration the fact that 252 acres of that coal had been bought of John Lantz at $400.00 per acre, almost 400 acres in Whiteley township at that price, did you take that into consideration?

A. Yes, most of those purchases that were made by the Cumberland Coal Company was made to complete their purchase made some years ago and under contract.

Q. Do I understand you to say the fact that the Cumberland Coal Company paid $400.00 an acre for that coal had nothing to do with the market value of it?

A. That was a disconnected piece there.

Q. No one could have developed that coal but the Cumberland Coal Company?

A. No sir.

Q. Therefore the Cumberland Coal Company had it at its own price?

A. Yes.

Q. And it chose to pay $400.00 an acre last year?

A. As I understand it it was the completion of a contract entered into three or four years ago.

Q. You don't think that should have any effect on [fol. 115 a] making up your value in Cumberland township?

A. It would have some effect.

Q. Do you know the William Keener tract in Cumberland township?

A. I am not familiar with it.

Q. Do you know of the sale of it to the Cumberland Coal Company on November 4, 1926?

A. I do not.

Q. Do you know as a matter of fact the Cumberland Coal Company paid upward of $600.00 an acre for the William Keener tract on November 4, 1926?

A. I heard of that.

Q. Would that affect your statement as to the market value of the coal in Greene township?

A. It would.

Q. Then what would you fix the market value of the coal in Greene Township at?

A. I fixed the market value in Greene township at just half what it is in Monongahela township.

Q. Which would be $150.00?

A. Yes, sir.

Q. What do you mean you assessed it at $150.00 or it is worth $150.00?

A. I mean assessed.

Q. You consider the market value of coal in Greene township at $300.00?

A. As compared with the assessed value of $300.00 in Monongahela township.

Q. How do you reconcile the fact that the Cumberland Coal Company paid William Keener $600.00 an acre in Cumberland township when the market value was $300.00; when [fol. 116 a] they had it fixed so no one could develop it but that coal company?

A. They were either carrying out a previously arranged contract, or if they had it, why should they buy it at all?

Q. That is what I am asking you?

A. I don't know.

Q. How do you reconcile the fact they paid John Lantz $400.00 an acre in Greene township and at the same time paid $400.00 an acre for almost 400 acres more in Whiteley in order to get the Greene township coal?

A. Same answer as to the other.

Q. Do you know anything about the Garard coal that was sold in the southern branch of Muddy Creek in the upper end of Cumberland township?

A. I thought it was something like $600.00 I don't know.

Q. You don't know it was $700.00 per acre?

A. I thought it was $600.00.

Q. Is there any specific reason that the Garard coal on the upper branch of Muddy Creek is worth more than the coal that surrounds it?

A. I don't know of any.

Q. How do you explain your statement that the market value of coal in upper end of Cumberland township would be worth $300.00 and Cumberland Coal Co., has paid in previous years $700.00 an acre for the same coal?

A. My reply to that is, if the assessed value of $300.00 per acre is proper in Monongahela township and assessed [fol. 117 a] value of half of that for coal in next township and the rear end of Cumberland township is about justified.

Q. You are not undertaking to say $260.00 is too high you are saying that the comparative value between it and Monongahela township is too high?

A. Yes, sir.

Q. Do you know anything about the sale of the Joe Moredock coal in the end of Greene township?

A. I think that is another one of those sales to the Cumberland Coal Co.

Q. Do you know what the price was?

A. I have heard it.

Q. You don't know whether it was $600.00 an acre or not?

A. About that I think.

Q. That was in the extreme western end of Greene township?

A. Yes.

Q. What is the comparative value of the coal where the Moredocks sold in the extreme end of the township and the coal in the eastern end of the township?

A. As I said before I would put the whole of Greene township in one single zone.

Q. Then you think the Murdock coal is worth about the same amount as any other like size of coal in the same township?

A. I would say for assessment.

Q. You are acquainted with the holdings of the Cumberland Coal Company?

A. Yes.

Q. You note on that map in your hand, Exhibit B that the [fol. 118 a] coal in Cumberland and Greene township are marked yellow?

A. Yes.

Q. You note other holdings in Jefferson and Monongahela, they are not marked yellow?

A. Yes.

Q. What kind of an outlet does the Cumberland Coal Company have to the Monongahela river?

A. The Cumberland Coal Company does not own any coal on the River in Monongahela.

Q. Who does?

A. The Frick Coke Company.

Q. Is the Frick Coke Company connected with the Cumberland Coal Co?

By Mr. Kyle: Objected to as not proper cross-examination and wholly irrelevant and immaterial.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

Q. Are they connected?

A. My understanding is they are both affiliated with the steel company.

Q. United States Steel Company?

A. Yes.

Q. Do you know what kind of a company Cumberland Coal Company is, operating or holding?

A. I don't know what they are.

By Mr. McClay: We will admit that the H. C. Frick [fol. 119 a] Company and majority of stock is owned by United Steel Corporation. And nearly all of the shares of Cumberland Coal Company is owned by United States Steel Corporation; that the H. C. Frick Coke Company is an operating company and the Cumberland Coal Company is not at present an operation company, but what its intentions are none of us know. It will be an operating company when it opens up the Greene County coal.

By Mr. Waychoff: In reply to your statement that development of coal had ceased, will you state what is the reason for building the railroad from Waynesburg to Mather?

A. I don't know, but I don't know of any coal development that is contemplated over it.

Q. Do you know of the Hillman interests?

A. Yes.

Q. Isn't it a fact that Mr. Hillman partly financed the building of that road?

A. I don't know, but Mr. Sheets of the Hillman Company told me they were not contemplating any development.

Q. Now about this belt line do you know anything about the contemplated development of the Frick Coke Company at Rices Landing?

A. I don't know what their intentions at Rices Landing is, but I understand they are abandoning their present plant.

Q. What do you mean they are abandoning their old Dilworth mine?

[fol. 120 a] A. Yes.

Q. They have put in a new shaft back in the country two miles back?

A. Yes.

Q. They are contemplating putting on improvements to said plant owned by them on land above Rices landing.

A. I don't know.

Q. You don't know they are contemplating using the belt line?

A. I know that is the method they are going to use.

Q. Do you know whether or not the underground is prepared for that?

A. I do not.

Q. And they have for years been working at that for purpose of future development?

A. I do not.

Q. In your experience how long could they run a belt line to bring coal out to be reasonable in the mining of coal in a mine of that kind, how long could the belt be?

A. They put it in in units about a quarter mile long and and can put in as many units as they desire.

Q. How do you explain your statement that the coal in the back end of Cumberland township could not be successfully taken by belt to the river?

A. I did not say that. I said there was a distance there of about six or eight miles and it takes possibly three or four years to drive an entry and put in a system a mile long, [fol. 121 a] so it would be 18 to 20 years before they could possibly get to that coal by that method.

Q. Do you know how far their entries are now, the Frick Coal Company, The Dilworth and the new shaft?

A. No, I do not.

Q. During all this twenty years you were talking about the company would be mining its own coal in Jefferson township on its way to this coal?

A. Sure.

Q. You say you are acquainted with the same conditions in Fayette County as you are here?

A. Yes.

Q. Do you know anything about the assessments of the coal immediately across the Monongahela River in the townships up and down that river?

By Mr. Kyle: Objected to.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

A. Yes.

Q. What is that township assessed at that is directly across the river from Cumberland township in Fayette County?

A. I don't know.

Q. What is your idea as to the comparative value of the coal directly opposite the river in Fayette County from Cumberland township as to the Cumberland township coal across the river?

[fol. 122a] A. In Fayette County opposite the Northeastern part of Cumberland township is the poorest quality of coal in Fayette County. Comparative value would not be as much as coal in Cumberland township. I think as a general proposition coal lands in Greene County are more variable and not as uniform in quality as in Fayette County.

JOHN M. RAYBURN sworn.

Direct examination.

By Mr. Kyle:

Q. Mr. Rayburn where do you live?

A. Pittsburgh, Pa.

Q. What is your business?

A. Civil and Mining Engineer.

Q. How long been engaged in the business?

A. 38 years.

Q. Where have you worked in that capacity?

A. I have worked all over Western Pennsylvania and many places outside of Pennsylvania and particularly in Fayette, Washington and Greene County.

Q. Generally what has been the nature of your work as a mining engineer?

A. That of opening mines, developing mines, taking care of the maintenance of operations, valuation of properties, reports for prospective purchasers, trust companies, loans.

Q. Has your work extended into Greene County?

Vol. 123 a] A. It has.

Q. Are you an engineer at the present time for any operations in Greene County?

A. Penn Pitt Coal Company and for the interests of the Duquesne Light Company in Warwick mine.

Q. State whether or not your experience as mining engineer has familiarized you with values of coal lands in Greene County?

A. I would say it has.

Q. Do you feel yourself qualified to express an opinion as to the values of coal lands throughout Greene County?

A. I believe it does.

Cross-examination.

By Mr. Wayehoff:

Q. Mr. Kyle asked you if you were familiar with the values of coal lands in Greene County enough to express an opinion?

A. I am.

Q. I ask you if your experience has been such as to make you familiar with the market value of coal lands in Greene County at public sale after public notice with a willing buyer and willing seller?

A. I have been acquainted with coal lands some years in Greene County, but not familiar with sales of coal lands in the last few years because I have had no knowledge of such sales.

Q. In three, four or five years?

A. No, sir.

[fol. 124 a] By Mr. Waychoff: Object to his qualification to testify as to the market value of coal lands in Greene County.

By the Court: Objection sustained.

By Mr Kyles:

Q. Are you familiar Mr. Rayburn with the quality of coal the general trend of the development of coal in Greene County?

A. I am.

Q. Have you kept yourself familiarized with the sales of Coal so long as there were sales of coal in Greene County?

A. I did.

Q. Up to what time?

A. Up to possibly eight years ago to ten years ago.

Q. You have had no knowledge of coal sales within eight or ten years?

A. No specific knowledge, nothing more than the hearsay knowledge I have had.

Q. You have had the general knowledge of all the sales in the county?

A. Absolutely.

Q. Up to the present time.

Court adjourned until 1:30 P. M.

Court Convened at 1:30 P. M.

Mr. Rayburn on the stand.

[fol. 125a] Cross-examination.

By Mr. Waychoff:

By Mr. Kyle: We would like to excuse Mr. Rayburn from the stand to call a witness who has to leave.

By the Court: That is al- right.

Robert T. Donley sworn:

Direct examination.

By Mr. Kyle:

Q. Mr. Donley where do you reside?

A. Morgantown, W. Va.

Q. What is your business?
A. Attorney-at-law.
Q. With whom are you engaged in the practice of law?
A. Donley and Hatfield.
Q. What is the name of Mr. Donley?
A. Edward G. Donley.
Q. He is your father?
A. Yes.
Q. I believe you were appointed by the Court of Monongalia County, as special commissioner at the creditors sale to sell certain coal lands known as the Knutti in Battelle District?

Mr. Waychoff asks for an offer.

By Mr. Kyle: We propose to prove by the witness on the [fol. 126 a] stand that he was appointed special commissioner to sell certain coal known as the Knutti coal, which is located on Dunkard Creek adjoining Wayne township; that he proceeded with his duties as such commissioner advertising the property, gave due public notice of the sale, the fact that he sold the coal and the price at which it was sold. Said coal being located immediately adjoining Wayne township and being the coal of equal value with that of the coal in Wayne township, as evidence of the market value of coal at the present time in Wayne township.

By Mr. Waychoff: The County of Greene objects to the testimony for the reason that it refers to land situate in the state of West Virginia and not in Greene County, nor in any townships thereof. Second, because a sale such as the one set forth in the offer of counsel is not such a sale establishing the market price of the coal at public sale after due public notice of a willing buyer and a willing seller. The offer showing that it is what is known as a forced judicial sale of the property. Third, because it is generally incompetent, irrelevant and immaterial.

By the Court: Objection overruled, exception noted and bill sealed for the appellees.

Q. When were you appointed commissioner to make this sale Mr. Donley?
A. Some time in the year 1927.
[fol. 127a] Q. When did you make the sale.

A. The sale was made and the deed executed on December 19, 1927, and recorded at that time.

Q. State how much coal was there in this tract or tracts?

A. There were two tracts, one contained 54¾ acres and the other tract 66 acres and 86 poles more or less.

Q. Where were the tracts located?

A. In Battelle District, Monongalia County, West Virginia.

Q. What part?

A. Extreme northern part of the district adjoining Pennsylvania.

Q. State what you did in pursuance to your appointment?

A. We advertised the property in the New Dominion, a paper of general circulation in Monongalia County for four successive weeks and at that time we could not secure any bidder and, therefore, we continued the sale from time to time I believe it was four separate continuances after the completion of the first publication until finally after the last continuance we cried the sale at public auction in the Court House in Monongalia County and the bids were then received and property sold to highest bidder.

Q. What was the price at which you sold it?

A. 54¾ acres sold for $4000.00 cash in hand paid and the second tract of 66 acres and 86 poles sold for $6450.00.

Q. To whom did you sell them?

A. The first tract was sold to Fred J. Knutti, the second tract was sold to Dunkard Valley Bank at Blacksville, Mo-
[fol. 128a] nongalia County, W. Va.

Q. You said you were a son of Edward G. Donley?

A. Yes.

Q. Are you associated with him in the practice of law?

A. Yes.

Q. Have you knowledge of a sale made by Edward G. Donley, trustee of J. M. Johns of some coal located near to the Knutti coal on Pumpkin run in Battelle District?

A. I am acquainted with that, yes.

Q. When did that sale take place?

A. July 24, 1926.

Q. Do you have with you the deed appointing Edward G. Donley as trustee to make that sale?

A. I have.

Q. I show witness Exhibit D and ask him to state what it is?

A. Deed of trust in which James M. Johns, Jr., was the grantor and Edward G. Donley, grantee and trustee of the three separate tracts of coal land in Battelle District, Monongalia County, W. Va.

Q. Do you know what Edward G. Donley did in pursuance to his appointment under that date?

A. I do.

Q. What did he do?

A. Advertised these tracts of coal set forth in this trust in the New Dominion for four successive weeks at that [fol. 129 a] time he then sold the property at public auction before the Court House in Monongalia county to the highest bidder.

Q. State what is the area of the three tracts?

A. First tract contains 27 acres; second tract 17½ acres and the third tract 122.5 acres.

Q. At what price did he sell those tracts of coal?

A. The three tracts altogether totaling 167 acres were sold for the sum of $6025.00, purchase money paid and deed delivered. Cash in hand and deed delivered.

Q. You understand how far these tracts are located from the Greene County line?

A. The two Knutti tracts are right next to the Greene County line and the Madison Johns tract is, as I am informed, have never been there myself, is about ¾ of a mile from the Pennsylvania line.

Cross-examination.

By Mr. Waychoff:

Q. To whom was the last coal sold?

A. Sold to Jessie V. Herro

Q. What relation is she to J. M. Johns?

A. Sister.

Q. It was kept in the family then?

A. I suppose so, yes.

Q. Who had a debt against it that caused it to be sold?

A. That I don't know.

Q. Was it Jesse V. Herrod?

A. I don't know.

Q. You don't know whether it was sold to the judgment creditor or not?

[fol. 130a] A. I don't know.

Q. You don't know whether there was any actual money changed hands or just taken through a mortgage or deed of trust?

A. No, that was sold for actual cash, $6025.00.

Q. You don't know who the judgment creditor was?

A. I could not state.

Q. Whether there was actual cash or not, my point was whether it was bought by the creditor who held the judgment or lien against the land? What do you call it over there?

A. I could not state as to that.

Q. Does the lien you have in your hand show what the amount was against it for which it was sold?

A. Yes, it does. This deed of trust was made to secure the Federal Savings & Trust Company of Morgantown, W. Va., in the sum of $5000.00.

Q. Then the sister virtually took up the obligation and took the coal off her brothers hands and paid it over?

A. I suppose that is the conclusion.

Q. This 55¾ acres sold for $4000.00 who was the creditor against that?

A. A number of creditors in that suit the suit under which the Knutti coal was sold was the general creditors suit.

Q. To whom did you sell it?

A. First tract sold to Fred J. Knutti, second tract to Dunkard Valley Bank.

[fol. 131 a] Q. Did Fred J. Knutti have the lien against it?

A. I cannot state so at this time that he did.

Q. Do the papers show who, or how he paid for it?

A. I do not have all the papers in the original commissioner's suit.

Q. You don't know whether that $4000.00 comprised all or a part of the lien against the coal?

A. I don't know.

Q. What about the other one $6450.00?

A. The Dunkard Valley Bank.

Q. Who had the lien against that coal?

A. The Dunkard Valley Bank bid on the property to protect themselves from a loan which it had made.

Q. Were these sales public sales?
A. Yes.
Q. After public notice?
A. Yes.
Q. Willing buyer?
A. As far as I know.
Q. Willing seller?
A. We were very willing to sell it.
Q. I am not talking about you, I am talking about J. M. Johns or Knutti; were they willing sellers?
A. I don't believe that is a fair question whether the owners are willing or not, I don't think it is capable of an answer.
Q. This same J. M. Johns, he ran away and left everything he had?
[fol. 132 a] A. I understand he has left the county, yes.
Q. Prior to this sale, he did?
A. Yes.
Q. No one knew where he was?
A. No.
Q. This Fred J. Knutti who bought the coal was he the original owner of the Knutti tract?
A. I don't know that.
Q. Do you know who made the deed of trust?
A. The Knutti property was not sold under deed of trust. It was sold under decree of the Court in a general creditors suit under which we were special commissioners to make the sale.
Q. Who were the creditors?
A. Eleanor Eddy Knutti.
Q. Who was she with reference to Fred J. Knutti?
A. I am not sure but I take it Fred J. Knutti is some relative of Mrs. Knutti.
Q. In that case they were protecting the family holdings?
A. I could not testify to that personally.

JAMES R. CRAY sworn:

Direct examination.

By Mr. McClay:

Q. I believe you are a lawyer residing in Uniontown, Pa.?
A. Correct.

Q. How long have you been a member of the Fayette County Bar?

[fol. 133 a] A. About 36 years.

Q. You have always been a coal operator for a considerable portion of that time?

A. That is true.

Q. What coal operations are you interested in?

A. At the present time I am interested in what is known as Puritan Coke Company in Fayette County.

Q. Did you own coal in Greene County, Pa.?

A. I did.

Q. Do you own coal now in this County?

A. No, I do not.

Q. Have you kept yourself posted as to the selling price of coal in Fayette County?

A. I have, I think.

Q. Are you familiar with the values of coal lands in this county?

A. I am.

Q. In what townships, Mr. Cray, did you own coal lands?

A. In Jefferson, Cumberland, Greene, Monongahela, Whiteley and perhaps in some others. I am not quite clear about that.

Q. You sold some of those properties to the Cumberland Coal Company?

A. I did.

Q. Have you kept yourself posted as to the values in the last two or three years?

A. I think so.

Q. Would you feel competent to express an opinion from your knowledge to express yourself as to these values?

A. I would in those districts.

[fol. 134 a] Cross-examination.

By Mr. Waychoff:

Q. On what do you base your knowledge of the market price of coal in these districts for the last two years?

A. Its relation to coal I sold myself, although I didn't sell any in the last two years.

Q. When did you sell your last coal?

A. I think three or four years ago.

Q. Since that time have you sold any coal in Greene County?

A. No.

Q. Have you bought any?

A. No.

Q. Do you know of any being sold?

A. Yes.

Q. Within two years?

A. Yes.

Q. In what township?

A. I think largely in Wayne township.

Q. Have you known of any more than one piece?

A. Yes.

Q. In Wayne township?

A. Yes.

Q. In Greene township?

A. No.

Q. In Whiteley?

A. I think so, but not within two years.

Q. In Cumberland?

A. No, none in Cumberland.

Q. In Monongahela?

A. No.

[fol. 135 a] Q. Are you qualified to express an opinion as to the value of coal in Cumberland township by any knowledge of sales?

A. Not from knowledge of sales.

Q. Qualified to express an opinion in Wayne township as to knowledge of sales?

A. No.

Q. In Whiteley from knowledge of sales

A. Not made within the past three years.

Q. Qualified to testify to the value of coal in Wayne township from actual sales or purchases from the knowledge of them?

A. Knowledge that I acquired in a general way, which I believe to be correct.

Q. More than one sale?

A. Yes.

Q. In Wayne township?

A. Yes.

Q. More than one in Whiteley?

A. No.

By Mr. Waychoff: Submit he is not qualified to express an opinion as to Cumberland and Greene, but possibly is as to Wayne.

By the Court: Overrule objection, note exceptions and seal bill.

By Mr. McClay:

Q. I show witness Exhibit B, which has been shown to prior witnesses and call your attention to coal in Cumberland township and Monongahela township, Dunkard, Greene [fol. 136a] townships and ask if you are familiar with those tracts of coal and general conditions?

A. I think I am.

Q. Assuming that the coal has been valued by the commissioners in Cumberland township fronting on the river at $260.00 per acre in your opinion what would be the comparative value of the coal three or four miles back?

By Mr. Waychoff: Submit Mr. Cray has not qualified in any way as this kind of an *an* expect.

By the Court: For the present we will admit the testimony.

A. I would say that the coal fronting on the river was worth anywhere from 25 to 50% more than that three miles back.

Q. Now Mr. Cray what effect has the distance from the river on the value of coal away from the river?

A. By reason of the great advantage of river transportation that coal fronting upon the river has a great advantage in the way of value while the coal back must be gotten to the river either by transportation over ground or under ground and the cost of building railroads and other modes of transportation would have to be added to the cost of the coal in the land.

Q. And the farther back you get from the river the less the value of the coal?

A. Where the coal is of equal quality that is true.

Q. But where the coal is not on any railroad but away [fol. 137 a] from the river it has very much less value than if it was on the railroad or near the river where transportation facilities are fairly good?

A. I would say that is correct.

Q. You will notice Whiteley township is assessed at $90.00 per acre, and Greene township at $225.00 per acre, also call your attention to Wayne and Franklin, how would the values of Greene and Whiteley compare?

A. Greene township would be worth considerably more than that in Whiteley township.

Q. Would there be a great difference?

A. The testimony has been it is based on 50% of its real value I would not think there would be that much difference between Whiteley and Greene.

Q. Greene is removed from the river by three or four miles and Monongahela township is largely owned by the owners different from Cumberland Coal Company, who owns Greene and large part of Cumberland township. What means does the Cumberland Coal Company have of getting to the river except by way of Jefferson township?

A. By means of a railroad or means of transportation on the surface, or if it were possible to force its way underground through other owners.

Q. Is there a general market for coal in Greene, Cumberland, Whiteley, Wayne and Perry townships at the present time?

A. None that I know of.

Q. Has there been a general market for coal in the past three years?

A. No.

[fol. 138 a] By Mr. Waychoff: Object to the form of question as leading.

By the Court: Explain to the witness the questions without testifying.

Q. What methods could you suggest by which the court would try to fix a true value of these coal lands in the absence of sales?

By the Court: Overrule objection, note exception and seal bill for appellee.

Q. What is the general condition in regard to the sale of virgin coal at the present time, or within the past three years?

A. Been very much depressed.

Q. As far as you can say as a business man, owner of coal and operator, what are the present prospects for the year- 1928, 1929 and 1930?

A. Not good.

Q. Has coal values increased or diminished in the past three years?

A. Diminished.

Q. To what extent?

A. In districts where the coal is marketable as to the front of the county I would say 50%, and where it is farther away from the river not so good.

Q. So that in some of those townships like Aleppo and Springhill township they have practically no sale?

A. Practically no value there.

[fol. 139 a] Q. Now Mr. Cray the fact is that the market for coal in Greene County along the river in Cumberland township is fixed by what Company?

A. The Cumberland Coal Company.

Q. What, if anything, had the Shannopin, which is owned by the Jones and Laughlin have to do with fixing the value?

A. They would have a bearing upon fixing the values.

Q. Do you know how many acres they have?

A. No, I do not.

By Mr. McClay:

A. 14000 acres.

Q. Mr. Cray look at that map there of Cumberland township that marked in yellow belongs to the Cumberland Coal Company and the colors in Green and Red belong to Mr. H. A. Phillips and Piedmont Coal Company, what in your opinion would be the fair value of the coal fronting on the river in Cumberland township?

A. At the present time if there were any demand I don't imagine it would be less than $500.00 an acre.

Q. What in your opinion would be the value of the coal in Cumberland township taking that as the basis marked in yellow extending back to the Whiteley township line on one side and Jefferson township on the other?

A. I would imagine $300.00 an acre.

Q. Take Monongahela township, Mr. Cray, what would be the fair value of that coal in your opinion in the mar-

[fol. 140 a] kets if there was any market for it at the present time?

A. About $400.00.

Q. What back in Greene township would be your opinion?

A. Possibly $250.00 per acre.

Q. Wayne township and as nearly as you can ascertain without measurement if it is not a very considerable distance from the river?

A. Yes, it appears so from the map.

Q. What in your opinion would be the actual value of that if it were exposed at public sale after due and ample notice given to the public by advertisements, etc.?

A. I would say possibly $200.00 an acre.

Q. That is how far back from the river Mr. Cray?

A. About ten to 15 miles.

Q. You will observe that Whiteley township is in front of that and it is assessed at $90.00 per acre, what in your opinion would be the fair value of Wayne township, if assessed at $90.00 per acre?

A. I would say coal in Whiteley township was worth $50.00 an acre more than that in Wayne.

Q. Take Perry township, which is just in front of it, it is assessed at $110.00 an acre, how would it compare to the coal in those two townships?

A. The coal in Perry township was worth no more than that in Whiteley assuming the quality is the same.

Q. Are you familiar with the coal in Gilmore township?

A. No I am not.

[fol. 141a] Cross-examination.

By Mr. Waychoff:

Q. Mr. Cray are you familiar with the location on that map in your hand, Exhibit B, of the railroad up Ten Mile, doesn't it show Ten Mile Creek on the map?

A. It shows Ten Mile Creek, but I don't see it marked.

Q. How far is it from your mind as you see the location of that railroad from the back end of Cumberland township?

A. About three miles or 2½ miles.

Q. Does that in your opinion effect the price of the back end of Cumberland township coal?

A. No, I don't think so.

Q. You have said the one reason, possibly the main reason, the coal in the back end was not worth as much as the coal in the front end was the cost of transporting it to the front?

A. Yes.

Q. Now, if you have a railroad for the purpose of transporting this coal, which would be five or six miles nearer the river would that affect the cost of it?

A. I don't think it would be logical to take that coal from Cumberland township over that railroad at all.

Q. You think then the close proximity of a railroad of first class construction, with ability for hauling is not of any benefit to the coal in the back end of Cumberland township?

A. No, sir, they do not prevail in that case.

[fol. 142a] By Mr. McClay: That yellow only indicates the coal from the assessment of which we have taken the appeal in Cumberland township.

Q. Doesn't the fact Mr. Cray that the actual block of Cumberland Coal Company reaches over to this railroad have any effect upon your judgment as to the effect of the railroad upon the value of it?

A. I am of the opinion that the railroad in Jefferson Township does not add anything to the value of coal in Cumberland township.

Q. Even though it runs over the coal, that is a part of the block?

By Mr. McClay: That is objected to as not proper cross-examination for the reason that it is immaterial who the owner may be of the coal in Jefferson township and not a question of how a particular corporation may get to the river, it is a question of general value or actual value of coal assessed. For the purpose of testifying we do not know how far Mr. Waychoff will go.

By Mr. Waychoff: The witness having testified that the coal in west end of Cumberland township was less valuable than the coal on the front because of transportation, we have asked him as to the proximity of the railroad as a means of transportation and which passes through the block of coal.

[fol. 143a] Q. Now Mr. Cray I understand you to say in your opinion the fact that the Cumberland Coal Company block shows this coal in yellow is a part extending over to and across the railroad coming up Ten Mile Creek does not in any way affect the value of the coal in your opinion?

A. I do not say that the coal in yellow extends over to the river.

Q. Doesn't that change your idea as to the value of that coal in West Cumberland?

A. I would say from an operating standpoint not to take it out on the railroad as presently constructed but on the river.

Q. You would not say generally that the railroad would not assist the transportation?

A. Sometimes it does and sometimes it does not have any effect.

Q. Is there ever a time?

A. Absolutely.

Q. What would cause that?

A. A railroad running up the valley or up the stream. The railroad might be a mile from the other side of the block and would not add a penny to it.

Q. In this case the railroad runs over the coal?

A. What I mean to say is this that the coal, that railroad being so distant from the coal in Cumberland township that the logical place to take out this coal would be by the river and not by the railroad, even though the railroad is closer than the river.

Q. Even though the railroad runs over the block?

[fol. 144a] A. Yes. I would say none of that Cumberland township coal will ever be taken out over that road.

Q. You think there will never be a railroad over the ground do you?

A. I would think there would be a railroad some time there.

Q. Don't you know that the plan generally followed by coal companies is to run their heading from the river back to the extreme end of the block and then take out all the coal as it comes?

A. I know that is not correct under present conditions of mining which have changed in the past few years they do not do it that way now. Now they concentrate their mining and take out a large block of coal and is done

quickly, possibly an acre a day in some places. The methods of mining are not what they were five or six years ago.

Q. Are you taking into consideration the fact there are within range of it four or five large blocks that are taking out a great deal of coal?

A. I am not considering that at all.

Q. You said there was no general market. Don't you know the Cumberland Coal Company has purchased all the coal and practically all the coal in these neighborhoods preceding the drop of the general market?

A. I think that is true in the particular district.

Q. The Cumberland Coal Company is holding this coal as a future supply for itself or allied companies?

A. I assume that is true.

[fol. 145a] Q. You have said the values in the last few years have depreciated 50%?

A. Yes.

Q. From what did they depreciate; where did they start to depreciate?

A. That is pretty difficult to answer. Coal sold at $600.00 per acre that I know of and I know that I could not sell today at 50% less if I had it.

Q. You feel you could not?

A. I am certain I could not.

Q. Where did you sell this coal at $600.00 an acre?

A. $625.00 an acre in Greene township.

Q. In what part of the township?

A. About the center of the township.

Q. When was that?

A. 1918 or 1919.

Q. You have not owned any coal in Greene Township since that time?

A. No, sir.

Q. Who bought it?

A. Cumberland Coal Company.

Q. Where did you sell any other coal land?

A. In Jefferson Township.

Q. When did you sell it?

A. Along about 1918.

Q. To whom did you sell it?

A. Sold that to I believe Emerald.

Q. For what price?

A. $700.00.

Q. When did you sell your coal in Cumberland township?

A. Along about the same time 1917, 18 or 19.

[fol. 146a] Q. To whom did you sell it?

A. I sold part of that to J. V. Thompson and part of it to J. G. Butler.

Q. For what price?

A. For $550.00 an acre to, I believe, $625.00.

Q. Where was it located in Cumberland township?

A. In about the center of Cumberland.

Q. What farm was it?

A. One was N. H. Biddle, another was known as the Keenan farm.

Q. When did you sell your coal land in Dunkard township?

A. Never owned any in Dunkard.

Q. In Whiteley township?

A. That must have been somewhere since 1924 and 1925.

Q. What did you sell it for?

A. $300.00 an acre, but the price did not net me that much, because I was obliged to take some bonds that did not net me that much, possibly $290 or $295 an acre.

Q. Where was it located, in what part of the township?

A. Could scarcely tell you that. I imagine close to Whiteley.

Q. Remember the names of the farms?

A. Quite a large number of farms, I had an undivided interest in quite a number of farms.

Q. How many acres did you have?

A. I have forgotten now I had two or three different tracts.

[fol. 147a] Q. When did you sell your coal in Wayne township?

A. That was about the same time I think this undivided tract I had extended into Wayne township.

Q. What did you get for it?

A. It all went at the same price.

Q. Your Wayne township coal went at $290.00 or $295.00?

A. The coal I sold was close to the Wayne township line, some of it was in Wayne township, but the body itself was practically in Whiteley.

Q. What coal you sold in 1924 and 1925 was sold at $290.00 or $295.00 per acre?

A. Yes.

Q. You said you owned coal in Monongahela township for what did you sell it?

A. Several years ago $600.00 per acre.

Q. How many years ago was that?

A. Possibly between 1915 and 1918.

Q. Did you ever own any in Perry township?

A. No.

Q. In Franklin township?

A. I did not.

Q. You testified that the Shannopin Coal Company had 14000 acres of coal in Dunkard township?

A. Yes, sir.

Q. Do you know what the price of that was?

A. No, sir.

Q. Do you know when that was?

A. Generally I do.

Q. You knew the price was $1000.00 an acre?

[fol. 148a] A. No, I never heard that.

Q. Your coal in Cumberland township was not near the river that you sold for $625.00 an acre?

A. No, I have had some closer the river than what I told you.

Q. Now you testified this coal on the river in Cumberland township was worth not less than $500.00 an acre?

A. Yes.

Q. You say that in spite of the fact there is two plants working full force taking out coal on the river front in Cumberland township, with that understanding you still say $500.00 would be a fair market for coal on the river front in Cumberland township?

A. I would say it would be.

Q. Have you been in the coal business long?

A. About 30 years.

Q. Is it subject to depreciation at times?

A. Yes.

Q. Have you seen any other times of depression as it is now?

A. Not as bad as this one.

Q. The coal business comes and goes?

A. Largely to the effect the coke business does, which is gone.

Q. From the beehive oven?

A. Is gone.

Q. You are very much of a pessimist about the situation at this time?

A. Oh, no, I am an optimist generally.

[fol. 149a] Q. You are an optimist about the coal at this time?

A. About as much as any of them that are interested.

Q. If the Interstate Commerce Commission would alter rates to give a fair treatment to this coal business generally what would be the effect?

A. Very little.

Q. You don't agree with Mr. Baton that is what is wrong with the coal business?

A. That affects coal business in about the Pittsburgh district. I would call this Fayette-Greene district. As in Fayette County I think it would not make any difference we are not in the fuel business.

Q. The fuel that is governed by that lake freight coal does not cut much figure with Fayette?

A. Our coal is purely a coke coal, and is being shipped to districts that the lake trade freight rate would not affect; the fuel market.

Q. So the men that understand the coal business disagree as to——

A. That may be true.

Q. Did you take into consideration in fixing your figures the fact that John Lantz had sold his coal in Greene township within a year at $400.00 per acre?

A. I knew about that sale, but not about that price.

Q. Did you know at the same time in order to get that coal the Cumberland Coal C-mpany gave John Lantz $400.00 an acre for coal land in Whiteley township?

[fol. 150 a] A. No, I do not.

Q. Did you take into consideration the fact that William Keener has within two years sold his coal in Greene township at upwards of $650.00 an acre?

A. I was not aware of that sale.

Q. If that is true would that change your idea of the market value of coal in Greene township?

A. In most of those cases it frequently sells at a price very much exaggerated or very much depreciated and they do not fix the market value of coal. I have myself bid very much more than it is worth because it has a particular location that we are obliged to get in order to complete our transaction.

Q. You mean by that you bid a large price if your mine was developed?

A. Yes.

Q. That would not be true in regard to the Cumberland Coal Company in Greene township?

A. I don't know.

Q. Did you take into consideration that Joe Murdock's coal in Greene township sold for $600.00 to the Cumberland Coal Company?

A. I knew of that sale, but not the price.

Q. Would that sale considering the fact that the Cumberland Coal Company paid $600.00 an acre, affect your judgment as to coal in Greene township?

A. No.

Q. What would affect your judgment?

A. Body of coal sold.

[fol. 151 a] Q. If there was no body of coal unsold and the small pieces that were left wouldn't that establish the basis in your mind as to the value of the coal?

A. I think it would.

Q. How would you disregard the Keener coal at $600.00 an acre, and John Lantz at $650.00, etc.?

A. Some places where there was coal sold at a price way down which would not change my opinion any.

Q. Do you know of any?

A. No, I do not.

Q. Don't you know as a matter of fact there never has been an acre sold way down in Greene township? In the upper part of Cumberland township did you know the Garard coal had been sold at $700.00 per acre on the south branch of Muddy Creek?

A. No.

Q. Would that change your opinion in regard to the upper Cumberland township coal?

A. If some other concern did it would have more effect than the Cumberland Coal Company.

Q. No other concern would dare buy it except as speculation?

A. If it were surrounded by the Cumberland Coal Company no other concern would buy it.

Q. If they did buy it they would be subject to whatever the Cumberland Coal Company wanted to pay them later.

—. ——.

Q. So the Cumberland Coal Company is not trying to [fol. 152 a] establish the price of coal in that neighborhood?

A. Largely no; that would not be fixing market value for the whole district.

Q. When the Cumberland Coal Company has authority for fixing that price and they have independently purchased from four different persons in that neighborhood reasonably large farms of coal for from $400.00 to $700.00 an acre, you still say that does not affect you in any way in making up your value in Cumberland?

A. No, sir, I don't think they could sell it for 50% of what they paid for it.

By Mr. McClay:

Q. You know where Monongalia County adjoins the Pennsylvania line?

A. Yes.

Q. You have testified also as to the Wayne township values. If there were sales in the past two years of property close to the Pennsylvania line at anywhere from $36.00 to $80.00 an acre, coal similar to the Wayne township coal would that affect your judgment?

A. No.

Q. If that property were sold after due advertisement and open to the public would that have any effect on it?

By Mr. Waychoff: Objected to first that sale was a forced sale and not contemplated as fixing values, and second, the witness has already testified as to fair market value of coal in his opinion in Wayne township.

[fol. 153a] By the Court: Overrule objection, note exception and seal bill for appellee.

A. I think a public sale of property of coal or any other sale would have some effect in fixing the market value.

Q. In fixing the market or actual value for which it could be sold you consider not only the fact that the sales in that particular neighborhood, or in the absence of sales in that particular neighborhood, to take into consideration general conditions which would affect the saleability or control the minds of purchasers?

A. I would consider all the conditions in connection with it from an operating standpoint.

By Mr. Waychoff:

Q. I believe you said Mr. Cray to Mr. McClay that you did regard the sale at sheriff's sale or forced sale in West Virginia of one tract of coal at least at $100.00 an acre in making up your opinion as to the value of coal in Wayne township?

A. No.

Q. Then those sales had nothing to do at all with the price you set for Wayne township coal?

A. No, sir.

By Mr. McClay:

Q. You did not know of them, did you, Mr. Cray?

A. No, I did not know of them at all.

[fol. 154a] W. G. Laidley sworn.

Direct examination.

By Mr. McClay:

Q. What is your business?

A. Executor of the George L. Hibbs' estate for the last 20 years.

Q. Where do you live?

A. Uniontown, Pa.

Q. Where was the George L. Hibbs estate largely located?

A. In Greene, Washington and several counties in West Virginia.

Q. Was he the owner of considerable coal?

A. Yes.

Q. What townships in Greene County did the Hibbs estate own properties?

A. In Cumberland, Greene, Whiteley, Wayne, Gilmore, Jackson and Springhill.

Q. Have you kept in touch and would you know the value of coal in Greene County?

A. I don't believe I do, I used to think I did.

Q. You have sold coal?

A. Yes.

Q. You have sold coal to the Cumberland Coal Company?

A. Yes.

Q. You have sold coal to others?

A. Yes.

Q. Have coal values risen or fallen in the past three years?

[fol. 155 a] By Mr. Waychoff:

Q. Your experience with sales Mr. Laidley has been how long ago?

A. Last in Greene County about five years ago.

Q. Have you had any experience or knowledge of sales since that time?

A. No experience.

Q. Any knowledge?

A. Yes.

Q. From which you are going to base your opinion as to values?

A. I don't know, I don't think it could change it any.

Q. You had no knowledge, only hearsay?

A. No, sir.

By Mr. McClay:

Q. You are still in charge of a large body of coal in Greene County?

A. Yes, sir.

Q. Have you been keeping in touch with the sales of coal in Greene County?

A. Yes, by publication, only where I was interested.

Q. You were interested in making sales of what remaining property you had?

A. Yes.

Q. Are you interested in making sales of that in Greene County?

A. Yes.

Q. Do you inform yourself from time to time as to actual values?

A. Yes.

[fol. 156 a] Q. From your knowledge and from your investigation, and from the facts which you have learned, has the coal lands increased in price or diminished?

A. Diminished.

Q. To what extent?

A. I believe 50% west.

Q. Are you familiar with the properties in Cumberland township?

A. Yes.

Q. What in your opinion in the year 1928 was the fair value of coal properties along the river in Cumberland township?

A. $500.00 was a round price.

Q. By going back three or four miles and looking at the property marked in yellow what would be the value of that compared with the value of the front coal?

A. If I was buying it I would say half at least.

Q. Look at Monongahela township coal, what in your opinion was that worth in 1928, or what would be the fair market or actual value of that coal?

A. That is a township in which I never had anything to do.

Q. Would it materially differ in your opinion from that of Cumberland?

A. The Cumberland coal is underneath; in Monongahela is the outcrop; in Cumberland is shaft.

Q. That is valued there for tax purposes at $300.00 per [fol. 157 a] acre, what would be the fair value compared with Greene, or what would be the fair value of Greene on the basis of $300.00 from which no appeal has been taken?

A. I would make that about one-half.

Q. Look at Wayne and part of Perry, have you any knowledge of the value of that property, the coal?

A. I have not since the last sale I made to amount to anything in Wayne township.

Q. When was that?

A. Five years ago.

Q. Have you kept in touch with the different sales in Wayne township since that time?

A. No, sir.

Q. You would not be able to express an opinion as to the fair and actual selling value today in Wayne township?

A. No, sir.

Cross-examination:

By Mr. Waychoff:

Q. You say Mr. Laidley that $500.00 was a round price for coal on the front in Cumberland township?

A. Yes.

Q. In spite of the fact the mines are open there and every acre of coal is open to available mines, you don't know of any you could buy at $500.00 an acre, do you?

A. Yes.

Q. Do you think you could buy any at $1500 on the river?

A. Yes.

[fol. 158 a] Q. Do you know where it is?

A. Yes, but I guess I won't tell.

Q. You are afraid someone would want to buy it?

A. No, it is not that, that would be on exchange deal.

Q. What you mean to answer is that you know of coal land on the river that could be exchanged at the rate of $1500.00 per acre?

A. No, it would have to be bought and then exchanged.

Q. No one that owns coal in that whole neighborhood would consider taking $500.00 an acre for it?

A. I think so.

Q. What do you think about $1000.00 an acre?

A. I don't know about that. You asked me what I thought it was worth and that is what I think it is worth.

Q. You are called here as an expert and I ask you as that same expert if it is your opinion that any coal could be bought in this locality at *a* $100.00 per acre on the river?

A. I think so, at $500.00.

Q. How many acres?

A. More than an acre, you asked about an acre.

Q. You mean you know someone has a little patch under his house who would be willing to sell?

A. I didn't say what I know.

Q. Seriously, you don't know of anyone who owns a [fol. 159 a] block of coal, or piece of coal, at least, who would sell under $1000.00 an acre?

A. Likely not.

Q. How do you reconcile those two statements if the market value is $500.00 an acre that any one who owns coal in that neighborhood would sell at $1000.00?

A. I would not give more than $500.00 an acre for any coal. I am not talking about the market value.

Q. Have you been talking all this time about what you would give for it?

A. No, sir, I answered your questions.

Q. You meant that $500.00 was as much as you would want to give for it?

A. Yes.

Q. You did not mean that was the fair market value of coal in the market?

A. It is generally worth what you can get for it.

Q. You did not mean that was the market value of coal at all?

A. No.

By Mr. McClay:

Q. You are talking about and giving your opinion that anyone owning the coal and somebody willing to buy it; what would it fairly bring at a sale in the front of Cumberland and Monongahela?

A. I don't know; I was only talking about Cumberland, about what I knew.

Q. You know there are small pieces of coal there that [fol. 160 a] can be bought at $500.00 on the river if you can get anybody to buy it?

A. Yes.

Q. Now Mr. Laidley you have been acquainted with this situation a long while?

A. Yes.

Q. Is there any market, real market, for coal of the Pittsburgh or River Vein at the present time?

A. Not that I know of.

Q. You know of people going around wanting to buy and people wanting to sell?

A. Not that I know of.

Q. Would you have known of it if they had been?

A. I presume I would.

Q. Did you keep in touch with it?

A. Tried to.

Q. And tried to find out where purchasers could be procured?

A. Yes.

Q. Isn't that lack of market caused by the fact that all the coal is bought up except little patches of an acre or so that has not been bought?

A. I only know of one but that has no reference to these other two tracts.

Q. What other two tracts do you have reference to?

A. I didn't tell you.

Q. Can that be bought on the basis of a trade?

A. I wouldn't say about one of them, but one can.

[fol. 161 a] Q. At what price?

A. Within the last year he said he would take $500.00 an acre. I assume there is two acres even more.

Q. And it is entirely surrounded by the coal belonging to the companies?

A. No.

Q. Is it on the river front?

A. Yes.

Q. The reason it would sell for $500.00 is because there is only one buyer in the market that would want it?

A. That might be.

Lloyd E. Pollock sworn.

Direct examination.

By Mr. Kyle:

Q. Mr. Pollock where do you live?

A. Waynesburg, Pa.

Q. What is your business?

A. Attorney-at-law.

Q. What other business have you engaged in recently?

A. Optioned and sold a great deal of coal.

Q. In what sections of the county?

A. Chiefly in Wayne and Franklin and the townships west.

Q. Are you familiar with the prices at which coal has sold in the townships you refer to?

A. I am.

Q. Are you acquainted with the selling prices and the asking prices of coal in Wayne township, Perry and [fol. 162a] Franklin townships down to the present time?

A. I am.

Q. In view of the experience you have had in the optioning, purchasing and selling of coal lands in these townships do you regard yourself as qualified to express an opinion as to the present price at which coal in those townships would sell on the present market price?

A. As near as anyone could be under the present conditions.

Q. Do you know where the Knutti tract of coal is located across the line from Brave?

A. I know about where it is.

Q. What township in Green County does it adjoin?

A. Just opposite Wayne township, fairly close to Gilmore line.

Q. Mr. Pollock has the price, market price, of coal land in Wayne township, western Perry township advanced or diminished in the last three years?

A. It has been receding, in fact there is no special market at the present time at any price.

Q. What in your opinion would coal now in Wayne township sell for after due notice at public sale?

A. Possibly from $65.00 to $80.00 an acre depending a little on the location of it.

Q. What would you say about coal located in the western part of Perry township within that part of the township colored in yellow and brown?

A. At about the same ratio as Wayne township.

[fol. 163 a] Cross-examination.

By Mr. Waychoff:

Q. You say the price is receding?

A. Yes.

Q. You mean the only buyer out there Mr. Henry A. Phillips has quit buying for the time being?

A. Mr. Henry A. Phillips is the only man who has bought extensively in Wayne township in the last ten or 15 years.

Q. You say the buyers have quit you mean Henry A. Phillips has temporarily quit?

A. No I mean you cannot find a market for an individual tract.

SAMUEL STERN sworn.

Direct examination.

By Mr. Kyle:

Q. Mr. Stern where do you live?

A. Uniontown, Pa.

Q. What is your occupation?

A. Buying and selling coal lands, make some coke, interested in banking.

Q. Have you engaged extensively in the buying and selling of coal lands in Greene County?

A. For the past 25 years.

Q. In what townships have you bought, owned or sold coal lands?

A. Cumberland, Franklin, Wayne and East of Wayne, Perry and Whiteley.

Q. Are you at the present time the owner of coal lands in any of the townships named?

[fol. 164 a] A. Yes.

Q. In what townships?

A. Perry and Whiteley.

Q. During the 25 years in which you say you have engaged in trying to sell coal lands you have kept yourself familiar with coal lands in Perry Twp.?

A. Yes.

Q. To what extent have you kept yourself familiarized?

A. I have kept myself fairly informed because of the fact we were also the buyers of coal if we could get it favorable enough and wanting to sell it if we could get a fair price.

Q. I show witness Exhibit B, state whether or not you are familiar Mr. Stern with the holdings of the Cumberland Coal Company in Cumberland Township?

A. Yes, according to the maps which I have as well as this one.

Q. Are you familiar with the location of the mines, operations along the river in Cumberland and Monongahela townships?

A. Yes.

Q. State what in your opinion is the comparative value of the coal lands in Cumberland township belonging to the Cumberland Coal Company, as compared to the coal lands between coal lands of the Cumberland Coal Company and the river?

A. I would say there is considerable difference in value in favor of the river front.

Q. How much Mr. Stern?

A. I would say possibly 60-40.

[fol. 165 a] Q. What would you say as to the comparative value of the coal in Greene township owned by the Cumberland Coal Company and the coal in Monongahela township?

A. According to this map I would say the value of the coal in Cumberland township and Greene township is very much the same.

Q. What in your opinion would the coal belonging to Cumberland Coal Company in Cumberland township sell for after due notice at public sale at the present time, or what would it have sold for in March, 1928?

A. You refer to coal in Cumberland and Greene townships, I would say I don't think there is a buyer for it at $200.00.

Q. State whether or not you arrived at that conclusion because of the fact that it is a large block owned by a company, or whether that conclusion of yours would apply to several tracts?

A. Based on the fact of the general depression in the coal business. We have an $18,000,000 development of coal and a $9,000,000 market.

Q. You have stated you are also familiar with valuations in Wayne and Perry townships would ask you to state what in your opinion coal in Perry township would sell for at the present time, or in March, 1928, at public sale after due notice?

A. I have personally been offered three different tracts in the neighborhood of $100.00 and refused to buy it because I could not see any market value.

Q. Where were they located?

[fol. 166 a] A. In Perry and bordering off into Wayne township.

Q. Are you familiar with the holdings of Greene County Coal Company?

A. Yes.

Q. Are you familiar with the organization of that company with reference to the number of shares that is outstanding, representing one acre of coal owned by the company?

A. I know approximately what it amounts to. Originally it was issued on the basis of six shares to the acre, after having sold off a portion of the field it approximates 8.888 shares to the acre.

Q. What is the par value of the shares?

A. $50.00 less 12½ dividend that has been paid thereon a few years ago.

Q. State whether or not you know anything about the sale price at the present time?

By Mr. Waychoff. Objected to.

By Mr. Kyle: Withdraw the question.

Q. State whether or not there are any encumbrances against the coal lands owned by the Greene County Coal Company.

By Mr. Waychoff: Objected to.

By the Court: Overrule objection, note exception and seal bill for county.

[fol. 167a] A. I could not answer that.

Q. What do you know about the present selling price of this stock?

By Mr. Waychoff: Objected to.

By Mr. Kyle: Withdraw the question.

Q. Has the Greene County Coal Company any other property than this coal in Perry and Wayne townships?

A. No, sir, it owns approximately 3400 acres in these two townships.

Q. I believe you have stated they own only this coal and there are shares of stock outstanding so that it takes 8.8 shares of stock to make one acre of coal?

A. Approximately nine shares.

Q. What does that stock sell for?

A. I stated a moment ago it was offered to me at approximately $100.00 and I refused to buy it.

A. You mean $100.00 for the coal or $100.00 per share?

A. $100.00 per acre.

Q. What price would that be?

A. It has been offered to me as low as $12.00 per share in fact $11.60, approximately $103.00 per acre.

Cross-examination.

By Mr. Waychoff:

Q. Is all of the coal of Greene County Coal Company in Perry Township?

[fol. 168 a] A. No, sir, small portion of it in Wayne.

Q. How much in Wayne?

A. I judge about 250 acres approximately.

Q. How much in Perry?

A. Approximately 3000 acres.

Q. Do you know whether there is any encumbrance against it?

A. Not that I know of.

Q. Do you regard ownership of stock in that company as safe as ownership of coal itself?

A. The same situation is there today. It is more advantageous to hold it as a company than as an individual.

Q. You think the price of stock would honestly represent the price of coal?

A. I am positive of that.

Q. Where were these tracts of coal you are offering at $100.00 an acre?

A. Undivided interests in this field.

Q. They were fellows that had the stock and wanted to sell it to get out of the company?

A. Yes.

Witness excused.

Mr. SAMUEL STERN recalled.

Direct examination.

By Mr. Kyle:

Q. Have you within a recent time owned any coal in Franklin township?

A. Yes.

Q. When was that?

A. Fall of 1923.

[fol. 169 a] Q. Do you still own that coal?

A. Yes.

Q. What do you regard as a fair market value of that coal?

A. Bought it in front of the Court House at $65.00 per acre and they had no bidder, but had arranged with the owner to bid it up to $75.00.

Q. What is the fair market value of that coal?

A. Seems as though we have a horse to feed, pretty hard to tell it does not have much value.

Q. Are you prepared to put an estimate on it as to market value?

A. No sir.

Cross-examination.

By Mr. Waychoff:

Q. Where is that coal located?

A. Franklin township North Waynesburg field.

Q. You say it is not worth much of anything?

A. No, don't have any buyer at any price.

Q. You are asked what the market value of the coal was?

A. I was, but I answered it in the way I just stated.

Q. Do you know that coal sold in the same immediate vicinity at $250.00 per acre?

A. I do not.

Q. You know the Denny sale? What about this $250.00 Denny sale?

A. I only know that from hearing it from the Greene [fol. 170 a] County people who visited me and told me some was sold.

Q. You had heard it?

A. Yes and there was a payment made on it.

Q. Your North Waynesburg coal is an undivided interest?

A. Yes.
Q. What is your interest?
A. 100 acres.
Q. One-twenty-eight then?
A. Yes.

By Mr. Kyle:

Q. Does your information go so far as to disclose to you whether or not the Denny sale has been completed?
A. Absolutely not.
Q. You mean it has never been completed?
A. Not to my knowledge and I have never heard that it has been.

B. F. Hoffacker sworn.

Direct examination.

By Mr. McClay:

Q. What is your business?
A. Engineer and geologist.
Q. How long have you been engaged in that business?
A. 23 years.
Q. Where do you live?
A. Pittsburgh, Pa.
Q. Are you familiar or have any knowledge of coal or coal values in Greene County, Pa.?
[fol. 171 a] A. Yes.
Q. How has your knowledge been derived?
A. In buying and selling coal and checking up the sales and purchases that have been made in the last 15 or 18 years.
Q. Down to the present time?
A. Yes.
Q. How do you get your information in regard to the sales of various tracts of coal in Greene County?
A. Matter of record at the Court House.
Q. How do you get the consideration or real values?
A. Sometimes it gives the real consideration and sometimes it is just $1.00.
Q. Where it is $1.00 how do you estimate the true purchase price?

A. Make inquiry of interested parties and ask directly what they paid for the coal.

Q. You also prepare maps for Greene County coal?

A. Yes, that is one of my weaknesses I made quite a few maps for the county.

Q. Who for?

A. Lawyers, banks and trust companies, and individuals, and coal companies.

Q. Do you know of any other persons who are engaged in the business of preparing maps for Greene County?

A. I would say no.

Q. Who else prepared maps as to any particular tracts of coal?

A. I don't know.

Q. Does your preparation of maps and investigation of [fol. 172 a] coal matters apply entirely to one or two townships?

A. Oh no.

Q. The coal owners apply to you for opinions as to location of drill holes?

A. Yes.

Q. And the laying out of coal operations?

A. Yes in a general way. Investigation by the diamond drill is one of the few ways you can investigate the coal in this county.

Q. From your investigation, sales that you have made from time to time, have you acquired the knowledge of the actual values of coal in Greene County?

A. I think I have yes.

Q. This knowledge of yours Mr. Hoffaker as to sales, purchases, etc., does that extend over the last two years?

A. Right up to the present time.

Q. In Greene County?

A. Yes, sir, up to the last sale of record whatever that was.

Q. What was the last sale?

A. The last one I have any knowledge of is this Long coal on Muddy Creek, I believe you call it Garard coal. You spoke of the Denny in Franklin township. I believe that would be the last one.

Q. The last one you know of that was carried out?

A. I know the Lantz was carried out and the Long or Garard coal was carried out and some Sewickley in Monongahela township.

Q. Do you know about the Keener?

A. I cannot place it by that name.

[fol. 173a] Q. Who bought the Denny coal?

A. Nobody.

Q. You are under oath now?

A. I understand the Menallen Company.

Q. Then you knew when you said nobody bought it that the Menallen Company bought it?

A. I said I did not think anybody bought it because I don't think the deal will ever be consummated.

By Mr. McClay:

Q. What do you mean nobody bought it when $4000.00 was paid down over a year ago?

A. To the best of my knowledge no deal was ever consummated. Gid knows something about that.

Q. What deals do you know of in Greene County in Cumberland township, Monongahela, Greene, Whiteley, Wayne and Perry townships, speaking of Pittsburgh seam only?

A. The Lantz coal was sold, and the Long and Joe Moredock was sold at corner of Greene, Jefferson and Cumberland and some was sold in Wayne township to Henry A. Phillips.

Q. Not in the past two years?

A. No not in the past two years. I think it has been almost three years I have a date on my map of the Long coal in 1925.

Q. When was the Lantz coal sold?

A. I think 1926 or 1927.

Q. To whom was that sold?

A. Cumberland Coal Company.

Q. When was the Long coal sold?

A. 1925 or 1926.

[fol. 174a] Q. And to whom was that sold?

A. Cumberland Coal Company.

Q. You say you cannot locate the Keener coal?

A. There are two or three of those Keeners in Greene township and I don't know which it was I think it was the one over in the northern part of Cumberland.

Q. Who bought the Moredock property?

A. Cumberland Coal Company.

Q. In what township was that located?

A. Corner of Greene bordering on Jefferson.

Q. You say you kept in touch with sales?

A. I have tried to.

Q. Were there any other sales made in Cumberland, Monongahela and Greene townships during the past two years?

A. Not to my recollection.

Q. Is there any general market price that can be fixed on the coal in any of the townships?

A. I don't know if you are going to fix a market price I would say no.

Q. Do you know of any persons who are willing to buy coal in those townships?

A. I know of nobody willing to buy coal anywhere in Greene County today.

Q. Have you made an attempt to get purchasers?

A. Quite serious attempts and I must keep on making those attempts.

Q. You have laid out plants assuming that the front coal in Cumberland township is assessed and valued at $260.00 an acre and no appeal was taken, that would stand for three [fol. 175a] years what would be the value of coal in the rear of Cumberland township owned by the Cumberland Coal Company?

A. I don't think it was worth half as much.

Q. Upon what is your opinion based?

A. The time it would take to mine and remove the coal would have a bearing upon it more than any other element. It must all come out one way it must all be extracted from the river front, you could go in and develop the property and bring it out but it would take years and years to get to the back end before you could get to it and it is foolish to suggest such a thing to go to the back end of a tract of coal and bring it out from the rear. You have to go in and bring it out a certain portion of coal as it is operated.

Q. I call your attention to Greene township as shown upon that map and ask you as to comparative value underlying Greene township and coal underlying Monongahela?

A. My impression about Greene township it that it has about the same value as the rear of Cumberland.

Q. What is the comparative value of that Greene township property, as compared to Monongahela township property?

A. On the basis of 50% of the value, being the assessed value, the Greene township coal would be about $130.00 per acre, about equivalent to the rear half of Cumberland township.

Q. In forming that opinion what have you taken into consideration?

A. The same thing in making the statement about Cum-
[fol. 176a] berland; that is the coal will have to be brought out from the river front or possibly a portion of it to the river front in Cumberland township. Some from the front near Rices Landing and some from the front near Big Whiteley Creek.

Q. I show you a map marked Exhibit B and ask you whether you are familiar with the values of coal in Wayne and Perry townships and ask you to take the assessments as fixed by the commissioners and take into consideration the surrounding coal in Center, Franklin and Whiteley townships and ask you what the fair value of that coal would be based upon the values fixed by the commissioners?

A. I think $100.00 an acre would be the fair full market value of any coal in Wayne township today and the assessed value on that basis of 50%, which they claim to have used in their reducing the assessment figure to 50% instead of 85%. Would line it up with Morris and Wayne in every respect.

Q. What have you to say about Perry township?

A. That corner Northwest of Perry would have about the same value. I don't see any difference in it in any way. That will be the last coal that will ever be worked by the Cumberland Coal Company and they will have 80 to 100 years from now.

Q. I show you Exhibit B and ask you who prepared that map?

A. I did.

[fol. 177a] Q. How was it prepared from what sources did you get your information?

A. The base of it was a Green County map we made about 21 years ago in making up what is called the Barnes Greene County map and on that map the present holdings of various companies were brought down to date from the record. I think I have the Greene County Coal map in better shape than any other coal map in any state that I know of.

Q. Without taking into consideration the coloring on that map I will ask you whether that map is a correct map of Greene County?

A. That is as near correct as it is possible to make it.

Q. I show you the coloring on that map and ask you who made those?

A. I did.

Q. Will you please tell the court what the colors in yellow means?

A. The yellow are the holdings of the Cumberland Coal Company in the townships for which appeals have been taken.

Q. And the ones now on trial?

A. Yes.

Q. What is the red and green?

A. They are a combination coloring to show that Henry A. Phillips and the Piedmont Coal Company is jointly interested in the tracts crossed with the red and green markings. The green coloring indicated Piedmont Coal Company where a tract is owned entirely by Piedmont Coal Company and where it is owned jointly by Piedmont Coal Com-[fol. 178a] pany it has a line across it. If it is all red it is Henry A. Phillips. Red and Green means jointly.

Cross-examination.

By Mr. Waychoff:

Q. Have you mentioned all the sales you know of in the last two or three years?

A. Yes to the best of my knowledge there is a lot of little sales that go on that is hardly worth while to take into account they do not mean anything in this case.

Q. You have known of the Wayne township sales to Henry A. Phillips?

A. Yes sir.

Q. What was the price?

By Mr. McClay:

Q. What year was that?

A. 1923.

Object to that question as too remote.

By the Court: Objection over-ruled, exception noted and bill sealed for appellants.

Q. Did you know of the sale of the John Lantz coal in Greene and Whiteley townships?

A. Yes.

Q. What price was it sold for?

A. $1000.00 an acre, but it afterwards came out it was sold for $400.00 an acre.

Q. Did you know that 252 acres of that was in Greene township?

A. Yes.

[fol. 179a] Q. And almost 400 acres in Whiteley township?

A. Yes.

Q. Does that affect your value of $130.00 in Greene township coal?

A. Not at all that has nothing to do with the value I placed on Greene.

Q. In other words what one buys and sells coal for have no bearing in your mind on the market value?

A. No, that sale was the clearing up of a general sale of a large tract of coal and it may have included nuisance value that this Lantz coal left in the entire tract.

Q. Did you take into consideration the Keener sale when you fixed that coal?

A. That is the sale that I have no recollection of, but if I had it would have been taken.

Q. Would the fact that coal sold at $650.00 lately affect your value?

A. No, and the same applied as to the Joe Moredock and the Long coal.

Q. I understand you to say that those three sales and the price at which they were made, they being the only late sales in that township, does not affect your judgment as to market value in that township?

A. Not at all I am surprised that the Piedmont Coal Company bought it.

Q. You disagree with them.

A. I certainly do. I think it was dumb.

The fact that coal land in Cumberland township sold for [fol. 180a] $700.00 an acre does that affect the market value you put upon that coal?

A. The same answer and the same explanation.

Q. You don't permit all the coal sales you have had anything to do with to come in under that value?

A. I gave my answer and my explanation.

Q. Did you make any other investigation of coal lands in this county?

A. Worked about four years ago for the Greene County Commissioners about four weeks work for which I never got any pay.

Q. You are a little wrothy about it?

A. No, I am not wrothy, but I cannot collect any money from them. They say they have none and I cannot collect any money from them.

Q. At that time when you were placing the value of the coal on Cumberland township did you value it as a whole, or did you place two different values on different parts of it?

A. I think I made several divisions in not only Cumberland but in all of the townships they seemed to be rather longer than a proper unit for assessment purposes.

By Mr. McClay:

Q. Was that in writing?

A. I think so a lot of coming back and forth and a lot of talking and never got anywhere.

By Mr. Waychoff:

Q. Do I understand you made more divisions than two?

[fol. 181a] A. I think I made two, it was four years ago.

Q. You are sure that you made two divisions of Cumberland township four years ago as a proper way to assess a township?

A. I say that is my recollection of it if you want to say it was four years, say it is four years.

Q. What did you assess it at at that time, the coal in Cumberland township?

A. I don't remember.

Q. At what did you assess the coal in Greene township?

A. I don't remember.

Q. At what did you assess the coal in Perry township?

A. Same answer.

Q. In Whiteley?

A. Same answer.

Q. What did you assess the coal in Wayne?

A. Same answer.

Q. In Perry?

A. Same answer.

Q. Do I understand you to say today when you say it would not make any difference with the men that employ you?

A. No, sir, my judgment varies with conditions and certain conditions have changed with coal conditions either in the ground or on the ground.

Q. The values you placed upon this coal at that time were much higher?

A. I believe they should have been.

Q. Higher when the assessment was made at that time?

[fol. 182a] A. Yes, we got along pretty good that time.

Q. More than twice as high?

A. I don't remember I know they were higher.

By Mr. McClay: Appellants offer in evidence Exhibit B.

By Mr. Kyle: In connection with the testimony of Mr. Doniey appellants offer in evidence Exhibit D.

Court adjourned until 9:00 A. M. Wednesday.

Court conveyed at 9:00 A. M. Wednesday.

JOHN M. RAYBURN on the stand.

Direct examination.

By Mr. McClay:

Q. Mr. Rayburn you were sworn yesterday?

A. I was.

Q. In 1925 and 1926 what study did you make of values of coal in Greene County owned by the Cumberland Coal Company, Piedmont Coal Company and others?

A. Associated with Mr. Baton, S. A. Taylor and Mr. Evanson, we made a complete study of the whole of Greene County.

Q. Who is S. A. Taylor?

A. Consulting and mining engineer of Pittsburgh, Pa.

Q. Any experience?

A. Very prominent engineer and had 40 years experience.

[fol. 183a] Q. Who was Mr. Evanson?

A. Probably one of the best known mining engineers in the United States, he is also in Pittsburgh.

Q. Mr. Baton was sworn here yesterday?

A. Yes, sir.

Q. What did you investigate, examine and consider?

A. We considered the coal lands in Greene County with reference to the time at which it would probably be developed.

Mr. Waychoff asks for an offer.

By Mr. McClay: Counsel for the appellants in this case propose to prove by the witness on the stand that in the years 1925 and 1926 he associated with Mr. Evanson, a man of large reputation in this coal business, S. A. Taylor, who is well known throughout the bituminous coal region as a mining and civil engineer and Mr. Baton, who was sworn here yesterday, made an examination of the situation, considered the various phases of coal conditions in Greene County, the values of coal, and they determined as experts the possible time at which the coal would be removed, or length of time it would remain in the hills subject to taxation. This offer is made in conformity with the suggestion made in the opinion of Mr. Justice Elkins in several coal cases which he determined while sitting on the Supreme Court bench.

[fol. 184a] By Mr. Waychoff: The appellee objects to the testimony proposed to be offered for the reason that it sets up a standard, which is not the standard as laid down by Justice Elkins in the case which counsel for appellants mentioned. The true standard being the market value of coal at public sale after due public notice, and having nothing whatever to do so far as assessment purposes are concerned with the matter sought to be investigated. And further because the length of time which this appellant will use in taking out the coal is a matter wholly in control of the appellant and is not a matter to be considered in the investigation of the market value at the present time.

By the Court: Objection overruled, exception noted and bill sealed. The testimony will throw some light upon the actual value of the coal in place.

Q. Did you make a pretty thorough examination?

A. Our examination was as thorough as could possibly be made. We took into account first the total consumption

of the United States, its rate of increase or decrease, whichever might be. In this case it is a very very slight increase. We took into account the deflection of business from Western Pennsylvania to West Virginia and Kentucky. We took into account the production of the adjoining counties of [fol. 185a] Fayette and Washington. We took into account the maximum output and the time at which that output would start to decline, providing in this calculation that Greene County would take care of the increase or consumption in the United States, take care of any decrease in production in Fayette; take care of any decrease in production in Washington County and in that way determine the amount of production that would be necessary to come out of Greene County each year and we divided Greene County up into tracts of the proper size and applied the development as it would proceed as the demands would require to those tracts, taking first the tracts on the river and distributing the needed production for the market along valley or railroad development, which would follow naturally according to our judgment. In that way we arrived at a possible development of the whole county and determined the time at which each plant site would be developed in the county.

By Mr. Waychoff: The witness having explained all of the matters that were taken into consideration in the making up of his opinion and having neglected to say that the actual market value of the coal was taken into consideration, or that the price at which coal in the districts were selling were considered, further testimony is objected to on the ground that the witness has not qualified himself to give an expert opinion upon the market value which is the issue here.

[fol. 186a] By the Court: Objection overruled, exception noted and bill sealed for appellee.

By Mr. McClay:

Q. What was the result of your investigation?

A. The result was it required about 1,000,000 tons a year at that time to supply the requirements of the coal demand from Greene County which meant about one plant a year.

Q. Was your investigation made to ascertain and determine as near as possible what the actual value was and

what would enter into the minds of the proposed purchasers for coal in Greene County in the bituminous coal section?

A. It was.

Q. Did you take into consideration the transportation of coal from the various sections?

A. We did.

Q. Tell us whether your investigation resulted in any conclusion to availability of coal and when it would be available?

A. Our investigation showed us the best way to develop the coal was in tracts of 4000 acres, which is approximately six square miles, that provided for the maximum underground hauling of three miles, which is the economical limit of underground hauling. This provided for plants on the river front, extending three miles back therefrom and about two miles wide and also provided for sites of practically same dimensions in the valley available for railroads. That gave about 4000 acres to the plant, approximately 30,000,000 [fol. 187a] tons and an annual output of 750,000 tons per year, that is 2500 tons per day for 300 days. We usually consider 250 working days for a coal mine. That would make that front coal immediately available in tracts of 4000 acres each. In our consideration of the county we considered all of the tracts of front coal under Index 1, which meant each unit had its present value of one.

Q. Extending back when would the rear coal according to your investigation of Cumberland township, and all of Greene township, be available?

A. Part of Greene township would not be available for 30 or 40 years.

Q. What part would that be?

A. That would be a part in the extreme western part and Northwestern part.

Q. That front coal adjoining Monongahela township what was the result of that?

A. The development of that would be postponed a period of 10 to 20 years depending on which way the development would come.

Q. What do you mean by that?

A. Either the development would be extended from the plants opened on the river front or it would come from

railroads built in the valleys. The plant would be about the same in either event.

Q. That answer; does it apply to the rear of Cumberland township?

A. It does.

Q. And Greene township?

A. It does. This is a matter of distance from development points and has nothing to do with township lines.

[fol. 188a] Q. What township adjoins Greene township in the rear?

A. Whiteley township.

Q. What other township?

A. There is no township adjoins Greene on the West except Whiteley.

Q. What have you to say as to that coal?

A. The mining of that coal is postponed quite a long time. It is a long period all of this development under this arrangement.

Q. In arriving at your conclusion did you take into consideration the ordinary practice of mining engineers as to the number of openings?

A. We took into consideration the best practice in mining engineering.

Q. Did you take into consideration if the coal company was asked to get the coal out the necessary shafts they would have to put down?

A. We did.

Q. Give us in a general way how much longer it would require to reach the coal in Whiteley, in Greene and in the rear of Cumberland?

A. The first three miles development, which we provided for the river front under the most favorable conditions would require ten years for development in the rear. In other words it would require ten years before Greene township could be reached from the front development and for at least that time or much longer time there would be no real development under the premises that we based on the requirement of coal from Greene County, and there would be no development of the valleys necessary, naturally it would come from the river front.

[fol. 189a] Q. The same answer applies to Wayne township and Perry township that you have given?

A. Wayne and Perry the development was postponed for a long time.

Q. Do you remember about what length of time?

A. I don't it is 25 or 30 years.

Q. Now from your knowledge and your investigation the cost of production and assuming the true assessment of Cumberland township $260.00 is assessed by the assessors from which no appeal is taken, what would be the fair proportion of value for the rear?

A. The coal three miles back from the front of Cumberland township would be worth less than one-half the amount of the front coal.

Q. Looking at Exhibit B, the map you have in your hand, assuming the fair assessment of coal in Monongahela township is $300.00 per acre, what would be the fair comparative value of coal in Greene township?

A. A distance three miles back from the river front, which is approximately the rear of Monongahela, would be less than one-half.

Q. How far would you say one-half would extend in Greene township?

A. Over a three mile zone.

Q. Assuming that the fair assessment in Greene township of the three mile zone be $150.00 what would be the fair assessment of the coal in Greene township?

A. Depending on possible railroad development, without that the next value would be one-half, or possibly less than one-half.

[fol. 190a] Q. Would that extend over into Whiteley?

A. Part of it would be in the east portion of Whiteley.

Q. What would the remainder of Whiteley township be worth?

A. The remainder of Whiteley township would depend on possible railroad development, which would have to take care of that and would be much less in value than the eastern edge of the township.

Q. Look in Wayne township, taking the comparative assessments of Monongahela township, Dunkard, Perry, Eastern portion, what would be the assessment in Wayne township?

A. It would not be fair possibly to zone it from the river front for the reason it would not go out from the mining of the river front and it would depend on the develop-

ment of the railroad and it would be postponed 25 or 30 years at the best possible consideration of time and that postponement of the time would fix the value as to relation to unit which set up by the front coal.

Q. Take all those matters into consideration and the assessments which the commissioners have finally determined upon, what would you say is the fair value and basis of the assessment in Wayne township?

A. The fair assessment value in my mind in Wayne township, as I recollect my figures, would be about $40.00.

Q. We have not asked you about Perry?

A. Perry township is in about the same situation as Wayne township.

[fol. 191a] Q. The transportation of that coal would be over the railroad?

A. Over some railroad. It would have to be taken out by railroad.

Q. Now Mr. Rayburn all your conclusions as stated with respect to the things you considered and the proportionate values as fixed now, by the proportionate values of one tract of coal as respects to the other tracts of coal were concurred in by your associates Mr. Taylor, Baton, Evanson and yourself?

A. Yes there was a joint conclusion.

Cross-examination.

By Mr. Waychoff:

Q. By whom were all of you employed at the time you came to that conclusion?

A. By certain appellants.

Q. The appellants whose interest it was to keep down the assessment in Greene County?

A. I don't know anything about that we were employed by them to determine the relation of one part of the county to another with reference to the value of coal.

Q. Did you not understand at the time you were employed the purpose of your employment at that time was to determine the taxation on the part of your employees?

A. I did not understand that.

Q. What did you understand?

A. The purpose of our investigation was to determine

the relation of the value of one part of the county to another.

[fol. 192a] Q. Abstractedly without any concrete reason for doing it?

A. Absolutely.

Q. You have testified it to be 35 or 40 years until the coal in Whiteley township would be taken out?

A. Yes.

Q. How do you know that?

A. I think I testified that was based on the plans which we set up.

Q. As a matter of fact you don't know anything about that?

A. As a matter of fact I think we know more about it than anyone else and we used our best judgment.

Q. You don't know when the Cumberland Coal Company will put a mine in Whiteley and take out this coal?

A. I do not.

Q. You do know it has means to do that at any time it sees fit to do it?

A. I believe it has. In our consideration and in the consideration of different plans we ignored ownership absolutely, and no particular ownership was considered in any way.

Q. Did the Cumberland Coal Company tell you before you began when it was going to develop this coal?

A. It did not tell me then and I don't know now.

Q. Then you placed it theoretically in the parts without reference to practical facts in any way?

A. I cannot answer that question because I cannot con-

[fol. 193a] cede that it is theoretical, or it is not taking into account practical facts.

Q. You can answer no?

A. No.

Q. You did take into consideration actual facts?

A. Absolutely.

Q. What were they?

A. Demands on coal consumption with relation to Greene County, in adjoining counties and the whole of the United States.

Q. When you made up your mind as to coal consumption in the United States you did it with a calculation of great slump?

A. We did it all on figures of 35 years considering the highs and lows and used profile and had an average line.

Q. Your idea about the assessment of Greene County is it should be assessed in patches of 4000 acres?

A. That is not the idea.

Q. Your idea is it should be assessed in zones about three miles in width?

A. Yes.

Q. Do you know how other counties in the state assess as to zones or townships?

A. Most all other counties assess in townships.

Q. Do you know any counties that assess in the manner you propose should be done?

A. I do not. In a general way they have a uniform price in Fayette County, while it is assessed by townships it is uniform.

Q. That is because it is farther developed?

[fol. 194a] A. I would not say that.

Q. Do you mean to tell me it is more uniform than in Greene County?

A. The valuation is.

Q. Over the entire county?

A. Yes.

Q. That is because development is more uniform than in Greene County?

A. I would say not.

Q. The development is more uniform in Fayette than Greene?

A. Fayette is practically full of development.

Q. Explain to the court if that is not the reason; what is the reason for more uniform assessment in Fayette County?

A. I could not answer that.

Q. Take that map and in a rough way tell me what three mile zone Whiteley township would be in, what number under your plan?

A. Part of Whiteley township would be in the third zone.

Q. How far would that reach over into Whiteley approximately?

A. It would be about half mile.

Q. Then the most of Whiteley would be in the fourth and fifth zone?

A. Yes. I think I testified that third zone would be about the last zone to consider from the river front and coal would have to be considered from some other approach.

Q. That zone system so far as the river was concerned would only go back three zones?

A. That would be the only practical distance coal could be hauled in a conveyor.

[fol. 195a] Q. First zone 300, second zone 150 and third zone 75?

A. Yes.

Q. Take the estimate 75 in the third zone did you take into consideration the fact that Cumberland Coal Company has lately paid $400.00 an acre for 600 acres of coal in the third zone?

A. I did not.

Q. Did you take into consideration the Cumberland Coal Company has lately paid Joe Moredock $600.00 for three or four hundred acres in that zone?

A. I did not.

Q. The Girard estate $700.00 an acre for coal in that zone?

A. I did not.

Q. You did not base any of your testimony upon actual sales that have occurred in that zone or any other zone?

A. We did not.

Q. You did not do that in spite of the fact there are sales you could base your market value on if you chose so to do?

A. I don't think there is any sales at this time of sufficient moment to fix a market value.

Q. In other words you do not believe that the Cumberland Coal Company purchased the remaining coal in the block at $400.00 or $600.00 is to be considered in fixing the market value?

A. I do not.

Q. How do you fix the market value if you do not fix it at the price that is paid in the neighborhood?

[fol. 196a] A. In the general selling of coal would be the way.

Q. In this selling it is not?

A. No.

Q. You say the price at which coal is bought and sold in this neighborhood is not to be considered in showing the market price of coal in the same neighborhood.

A. I did not say that. I said the general selling of the coal from a district such as this would fix the market, but

selling of coal in small parcels does not fix the market value.

Q. You say that the sale of the Long coal at $600.00 an acre and the selling of the Lantz coal at $400.00 an acre, and the sale of the Keener coal at upwards of $600.00 an acre and sale of Joe Mordock at upwards of $600.00 and sale of the Garard coal at $700.00 an acre, those four sales is not to be considered in making up the market price of coal in this zone?

A. That is a fact.

By the Court:

Q. You mean as a scientific proposition you would not consider it?

A. I consider it would not fix the market value because there are many reasons that enter into the purchases that would have nothing to do with market value.

Q. Would you base the same scientific reason for selling of real estate over the same lands?

A. It would not apply unless vacant lots were to be used [fol. 197a] in connection with a larger number of lots. In a case such as that the rule would apply.

Q. In individual lots the rule would not apply?

A. In case of a lot a man might use his lot for a special purpose, but for a detached piece of coal like in a field soon to be developed.

Q. If a person is willing to pay a certain price it is worth that price?

A. It is worth that price unless it is bought for a specific purpose, that is, there may be attached another value.

—. ——.

A. In other words if there is a large piece of coal which has certain unimproved parcels in it, and there is adjoining property of large pieces of coal, rival companies or company in the same business, and there is a contention about the acreage of coal, frequently one company buys into the other company's field with an idea of making adjustments of lines, etc. It is possible that things like that enter into the field and give a particular piece of coal a value in excess of its actual value. Frequently a man buys a piece of real estate and gets on the right of way of a railroad company. Sometimes he does it on purpose and sometimes he does it and doesn't know it.

Q. He gets the value of it nevertheless?

A. Yes, sir.

Q. Your basis for your calculation is the loss on coal in the general market throughout the United States?

A. That is the way we get our basis determining the time of all development.

[fol. 198a] Q. Who is going to control the development in Greene County?

A. To our mind that control is registered by the demands of the trade. That is the only thing that controls the production of coal or production of any other commodity.

Q. One of the difficulties in the coal market today is the fact that certain people open coal mines in disregard of the trade?

A. That has something to do with it. A. The greatest thing that is the matter with the district of Western Pennsylvania is the fact that subsequent to 1923 we lost between 30,000,000 and 40,000,000 tons of annual output that went to West Virginia and Kentucky, that had more to do with it than anything else; that was caused by freight rate inequality and labor drop. The Jacksonville scale was one of the causes.

By Mr. McClay:

Q. There had also been an overproduction during the war.

A. There was an overproduction but operators would all have gotten through probably if it had not been for inequalities in freight rate and high cost of production.

By Mr. Waychoff:

Q. I note in answer to the court's question you said there might be a special purpose in buying these blocks of coal did your employer tell you of any special purpose it had in buying any one of these blocks of coal?

A. It did not.

[fol. 199a] Q. Do you know of any specific purpose?

A. I do not.

Q. Your statement was entirely speculative?

A. My statement was based on my past experience with large adjoining fields of coal.

Q. You stated a proposition a moment ago that I want to go into. You said, as I understand it, that the fact that

these tracts of coal were too small for independent operations might have been the cause of the Cumberland Coal Company buying them at the price at which you bought them?

A. It might have been.

Q. Don't you know it is just exactly opposite of that?

A. I do not.

Q. Don't you know the Cumberland Coal Company had absolute control of those tracts of coal and no other sane man would ever have bought them the size they were?

A. I do not.

Q. Do you believe it would have been an act of business judgment for any man to have bought those in the center of the Cumberland Coal Company block?

A. I think it would have been the proper time for anybody owning an adjoining field to have bought them.

Q. Don't you know there was only one person in the world, and that was the Cumberland Coal Company, to do that?

A. I don't believe that. I know that is not a fact.

Q. I am speaking of these four tracts of coal what other [fol. 200a] company or buyer adjoins the John Lantz coal?

A. I believe it was surrounded.

Q. Would you say it was good judgment for any other business man to have bought that coal?

A. Yes.

Q. Outside of the Cumberland Coal Company?

A. Yes.

Q. Don't you know the only institution or corporation on earth that would ever buy that coal to develop it would be the Cumberland Coal Company?

A. That is not a fact.

Q. Who would?

A. I am talking about fields and you are talking about individual tracts.

Q. I am talking about the John Lantz tract of coal surrounded by the Cumberland Coal Company. Would it have been an act of good judgment for any man to have bought that coal?

A. If a business man owned a field of coal adjoining the field of coal of the Cumberland Coal Company he could have bought that coal for the purpose of increasing his acreage in the adjoining field.

Q. You mean to straighten the lines?

A. Yes.

Q. In the end the Cumberland Coal Company would absolutely dictate the price of that coal within their block? In as far as the individual piece went?

A. They would not.

[fol. 201a] Q. Who would ever buy that John Lantz coal unless he was in some way allied, connected or intended to be, with the Cumberland Coal Company? Nobody else would?

A. No one I would say.

Q. The adjoining field would be the Shannopin?

A. Yes. They are neighbors on the other end.

Q. If that coal was not worth $400.00 an acre the day Cumberland Coal Company bought it, why didn't they wait until 30 years from now and buy it then?

A. I don't know.

Q. Isn't that evidence to your mind in buying it now when they did not have to that in their judgment it was worth that?

A. No that would not follow.

Q. It does show in your mind that they paid $400.00 an acre that they did not have to pay?

A. That does not follow for the reason I do not know that they would not have to buy it for their protection.

Q. In fact you don't know anything about the facts at all?

A. That is correct.

Q. You say the county ought to be divided into 4000 acre zones and each mine producing so many tons a day for so many years the life of a mine would be so many years, that is entirely theoretical?

A. No not theoretical.

Q. Have they done it?

[fol. 202a] A. Not yet.

Q. Is the appellants, or any of the other companies mining in Greene County thinking of adopting that plan?

A. Not in the unit such as that.

Q. The Mather-Collieries Company was built with a capacity of 6000 tons a day and taking out 3400 tons a day, they are not working on that unit?

A. It was practically working on that plan with a double unit. They have two shaft.

Q. Where are there two shafts?

A. They are close together.

Q. They do not hoist 5000 or 6000 tons a day?

A. They are hoisting 3400 tons from one shaft from Mather today. I think Mr. Baton explained the shafts had never been up to its capacity.

A. It is not up to the capacity of two shafts.

Q. State what the capacity of one shaft would be?

A. 3000 tons is very near the full capacity.

Q. In making up your theoretical statement of this matter did you figure that the railroad right of way had been purchased and contemplated up Whiteley Creek?

A. I did not.

Q. Did you know it?

A. I did not.

Q. Do you know as a matter of fact the right of way is bought and deeds are on record in Greene County and paid for?

[fol. 203a] A. I did not know that.

Q. You did not take that into consideration?

A. I did not except we had a railroad laid out in Whiteley Creek.

Q. But you figured that would be 25 or 30 years before it would go up there?

A. Something like that.

Q. You did not know that the charter had been granted and right of way taken?

A. No I did not.

Q. What does the time of the development of this coal depend on?

A. Demand for coal.

Q. Don't you know that is not a correct answer?

A. I do not.

Q. The proper answer is when the Cumberland Coal Company wants to or makes a move to develop it?

A. No I don't know.

Q. Don't you know the Cumberland Coal Company will not sell a ton of that coal on the public market?

A. That is possible.

Q. Why will the development of that block depend upon the public market for coal?

A. Because it is a part of the coal used in the United States.

Q. If they need this coal they will mine it this year or next?

A. They will mine it when they need it.

Q. In the meantime they want to hold it for their future development?

[fol. 204a] A. I presume so.

Q. Do you know anything about the quality of Greene township coal?

A. I know there is very little information about Greene township.

Q. What you have came from the core drill?

A. Yes.

Q. Does that not show the best quality of coal in Greene County?

A. I would not say so.

Q. Do you know of anywhere else the core drill showed better quality of coal than in Greene township?

A. I know other places where they showed as good a quality.

Q. Where are they?

A. I would not say, I would say Greene township is a good average quality and as good as anywhere else in Greene County.

Q. Would you say it was the best in Greene County?

A. Would not say so.

Q. Better than Monongahela?

A. Would not say so.

Q. Better than in Cumberland?

A. Would not.

Q. Do you take into consideration there is a railroad built in Wayne township at this time?

A. Yes. That is not a railroad.

Q. Do you mean to say it is not a railroad?

A. It is a railroad in the strict derivation of the term.

Q. You mention that you took into consideration the cost [fol. 205a] of railroad. You don't know where they are going to build a railroad and take it out?

A. You can't tell exactly, but there are certain places if a railroad is required that it would be built.

Q. Do you know how far the Buckeye Plant at Nemacolin has gone back into the county at this time?

A. No.

Q. Do you realize three miles, approximately three miles?

A. I would say about three miles.

Q. Between two and three miles already and still driving their entry back?

A. Yes.

Q. You don't anticipate that the Buckeye plant is going to stop at three miles in taking the coal to the river?

A. They will not, no.

Q. They are going to take out their entire block there from the river?

A. I would say yes.

Q. Do you know how far back it extends?

A. I do not.

Q. It extends back into the Cumberland Coal Company in Cumberland township?

A. Yes that is it.

Q. If the Buckeye Coal Company takes its coal out from the river would they go back five miles from the river?

A. Yes, but they will pay more for the hauling of the coal back of that.

Q. When you consider the fact that the tipples and shafts [fol. 206a] was to go from front coal would it not cost as much?

A. Would cost 5c a ton per mile to haul the coal.

Q. I ask you this if as you say they built the shaft and all the expense of equipping their plant for the first three miles when they came to the end of that three miles and they have the shaft and the plant on their hands what about the expense of taking out the back coal?

Q. The cost of the plant would be distributed over a period of 25 years and all the whole tract to take out yet.

A. Three miles developed on the sides would be about 4000 acres. That would be three miles long and two miles wide.

Q. Do you know how far it is from Nemacolin to Crucible?

A. I do not. It would be about six miles.

Q. How long has the Buckeye Coal Company been working down there?

A. I don't know about nine or ten years I expect.

Q. Did you take into consideration the fact that a railroad had been built up Ten Mile Creek to Mather at the time you made this survey?

A. I did.

Q. You did not take into consideration the building of the extension of the railroad from Mather to Waynesburg?

A. No, except in our scheme we considered that railroad i the building of the county.

Q. Would the building of that railroad now instead of 20 [fol. 207a] years from now affect your idea of the market v ue of the coal?

A. No. In the present condition of the market I don't th.ink the building of the railroad would have anything to d with the development of the coal.

Q. If the building of the railroad has nothing to do with t value of the coal why do you consider the cost of the b ilding of the railroad in the matter at all?

A. If the railroad were built at the proper time the costs si uld be put in.

Q. If not at the proper time it should not have been p t in?

A. No.

Q. But you did put it in regardless?

A. At the full value.

By the Court:

Q. At that time had the Shannopin Coal Company commenced their operations?

A. I believe they were just beginning.

Q. There were beginning development of from 14,000 to 16,000 acres?

A. I believe so they were beginning with one plant to develop the front coal, but what their arrangements are as to development of back coal I do not know.

By Mr. McClay:

Q. All the Shannopin work is done under the supervision of Mr. Baton?

A. Yes he built the plant.

[fol. 208a] By Mr. Waychoff:

Q. Do you know what the Shannopin paid for their 14,000 acres in the upper part of Dunkard township?

A. Not exactly.
Q. Do you know approximately?
A. $600.00.
Q. Approximately $600.00 and when?
A. I do not know the exact date quite a number of years ago.

By Mr. McClay:

Q. Was it in 1920 or 1921?
A. I think so.

CHARLES L. ALBRIGHT sworn.

Direct examination.

By Mr. McClay:

Q. Where do you live?
A. Pittsburgh, Pa.
Q. What is your business?
A. Asst. Secretary to the Frick Coke Company.
Q. What is your relation to the Cumberland Coal Company?
A. Likewise Assistant Secretary.
Q. Who is the Secretary?
A. Mr. William Gates.
Q. Where is he now?
A. Pittsburgh, Pa.
Q. Do you know anything about the purchase of the [fol. 209a] Lantz acreage partly in Greene and partly in Whiteley?
A. Yes.
Q. When was that purchase made?
A. July 27, 1927.
Q. Why was it made?

By Mr. Waychoff: Objected to as incompetent, irrelevant and immaterial.

By Mr. McClay: Counsel for appellants proposes to make the inquiries for appellants and show that there were certain reasons why they bought this property and why they

paid the price they did and it was not to indicate the true market value of coal for purposes of assessments.

Counsel for appellants proposes to prove by the witness on the stand that they bought what is known as the Lantz coal situate partly in Greene and partly in Whiteley townships first, because it was embraced within the field which was in contemplation of their purchases as early as 1918 and 1919, and second, to prevent any other owner, or abutting owner, of any lands, which they own from acquiring it and thus compel them either to trade or otherwise dispose of certain other coal which they desire in the same townships. In other words in order to prevent them from being squeezed and the price paid would not indicate the true, fair and actual market value of coal from what it would bring at public sale after due notice.

[fol. 210a] By Mr. Waychoff: Appellees object to the testimony first for the reason it matters not what are the elements of value in this tract of coal. The question is what the value was and secondly, that the purchaser of the coal should not be permitted to testify that the coal was not worth what he paid for it, and thirdly, as generally incompetent, irrelevant and immaterial to the issue in this case.

By the Court: Objection over-ruled for the present, exception noted and bill sealed for appellee.

By Mr. McClay:

Q. Do you know anything about that sale Mr. Albright?

A. Yes, it was made in my office in Pittsburgh, it was handled out of the Secretary's office of which I am a part.

Q. Could you answer the question do you know why it was made?

A. Yes.

Q. Why was it made?

A. For the purpose of rounding out the coal field.

Q. When was the greater part of that coal originally intended to be acquired?

By Mr. Waychoff: Objected to as incompetent and immaterial.

By Mr. McClay: Withdraw that question.

[fol. 211a] Q. What do you mean by rounding out the field?

A. Completion of the block.

Q. And why was that necessary?

A. To prevent the tract going into some one's hands and later holding it for a high price against us.

Q. Who owned the Lantz property as was located in what part of this field?

A. It is in the south central part of the field, partly in Whitcley and partly in Greene.

Q. What proportion of the coal in Greene township do you own?

A. I could not answer the exact proportion.

Q. It is shown in yellow on that plat?

A. 11,956 acres.

Q. In Whiteley township how many acres do you own?

A. 18,263 acres.

Q. Are you familiar with the Joe Moredock tract in Greene township?

A. Yes.

Q. Where does that lie?

A. That is the Joseph or J. B. Moredock tract, it is in the extreme northwestern corner of Greene township.

Q. Who owns the coal surrounding it?

A. Cumberland Coal Company.

Q. When was that purchase made.

A. I don't have the exact date.

Q. Was it made in the past three years?

A. I don't have the date.

Q. Why was it made?

[fol. 212a] A. It was taken under the option of March 31, 1919.

Q. The option was with whom?

A. It was the Grosscup option.

Q. And taken over by whom?

A. Piedmont Coal Company.

Q. You don't know what price Grosscups paid for that do you?

A. No, sir.

Q. You don't know what price the Piedmont Coal Company paid for it do you?

A. No, sir.

Q. You say that was under contract and delivered to you?

A. Yes.

Q. The last piece of property to which they call your attention is the Charles Keener heirs tract?

A. Yes.

Q. In what township is that located?

A. Greene township.

Q. Was that part of any contract which you had made and if so what at what time?

A. That was a part of the first Grosscup option.

Q. Assumed by what company?

A. Piedmont Coal Company September 28, 1919.

Q. The deeds were delivered under that contract to you?

A. Yes, sir.

Q. Take the Long and Garard where is that located?

[fol. 213a] A. That is in Cumberland township.

Q. Where?

A. Near the Southwest corner.

Q. Is that near the Buckeye Coal Company?

A. I don't just know how that lies with reference to the Buckeye.

Q. Was that taken over by you under any contract and if so what one?

A. Second contract of Grosscups dated March 31, 1919.

Q. Assumed by what company?

A. Piedmont Coal Company.

Q. The Piedmont Coal Company have to deliver that?

A. Yes.

Q. The date you gave the second Grosscup option is August or September?

A. March 31, is the date I have and the first one is September 1918.

Q. Was the first made before the second?

A. I am sufficiently familiar with that to say, what we know as the first Grosscup was executed on the 28th day of September, 1918. The second Grosscup is the 31st day of March, 1919. The year is wrong on the first one.

Q. Was that taken over the Garard or Long tract were they taken over under one of those contracts?

A. Yes. The second one is assumed by the Piedmont Coal Company.

Q. You take Exhibit B and I call your attention to the ownership of the Cumberland Coal Company in Cumber-

land township colored in yellow and embracing the assess-
[fol. 214a] ment of coal from which these appeals are taken, how many acres embraces that?

A. 9237 acres in Cumberland township.

Q. Look at Greene township how many acres are embraced in the appeal there?

A. 11,956.66 acres.

Q. Look at Whiteley township and how many acres are embraced there?

A. Not any.

Q. Look at Wayne and Perry how many there?

A. Wayne 6012 acres, Perry 3136 acres.

Q. How many acres of coal does the Cumberland Coal Company own in Greene County?

A. 64,754 acres.

Q. Have you begun any developments in this Cumberland Coal Company field at all?

A. Yes.

Q. Where?

A. Jefferson township.

Q. What have you done there?

A. Drove some headings back into the Cumberland block.

Q. Within what time does the company contemplate the beginning of the removal of coal from that field?

By Mr. Waychoff: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection over-ruled for the present, exception noted and bill sealed for appellee.

[fol. 215a] A. 10 years.

Q. Have the company taken into consideration the period of time over which its operations will extend?

A. No, sir.

Q. They do not?

A. No, sir.

Q. Does the H. C. Frick Coke Company own any coal in Greene County?

A. Yes, sir.

Q. Where?

A. In Jefferson township, Morgan township, Rices

Landing Boro, Monongahela township, and small amount in Greene township.

By the Court:

Q. Own any in Clarksville Borough?
A. No, sir.
Q. Wat operations have they in Greene County?
A. One at Dilworth.
Q. Any other?
A. No, sir.

By Mr. McClay:

Q. What are they doing at the Dilworth?

By Mr. Waychoff: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection over-ruled for present, exception noted and bill sealed for appellee.

A. Idle and being dismantled.

[fol. 216a] Q. Your answer to the inquiries with regard to the amount of coal that had been assessed to the Cumberland Coal Company, from which the appeal had been taken, does that extend to the ownership?

A. Yes, sir.

Q. Mr. Albright the coal which you own has been assessed in the various townships to which I call your attention, upon which the appeal from the assessment has been taken, and to the full extent of your acreage is it not?

A. That is my understanding yes.

Q. No deductions of 6% has been allowed you?

A. No, sir.

Q. It has been suggested to me that Mr. Scott testified there was contemplated opening up the Frick coke at some other place so that the development and operation would continue, is that a fact?

A. I have no knowledge of it.

Q. Would you have knowledge of it if it is a fact?

A. Should know something about it.

By Mr. Waychoff:

Q. Do you mean to say they are dismantling the new shaft at Dilworth?

A. Yes.

Q. And leaving it?

A. Yes.

Q. Where are these entries driven on the Cumberland Coal Company property?

A. Over a mile from the Rices Landing opening toward the westerly part perhaps a quarter of a mile to the north of that shaft.

[fol. 217a] Q. Those entries are to be abandoned entirely?

A. The entire mine has been abandoned.

Q. I am interested in this Grosscup option. You mean by that that some time in the past, 1918 or 1919, a man by the name of Grosscup sold certain coal in this district to a purchaser and agreed that in the future he would deliver the Joe Moredock coal and the Long and the Keener coal?

A. Yes.

Q. You do not mean you had an option on the Joe Moredock coal, or Grosscup had?

A. I don't know what Grosscup had.

Q. You don't mean Grosscup had an option on the Joe Moredock coal in 1919?

A. I mean that the option provided for the delivery of the Moredock coal.

Q. You do mean that Grosscup had an option on the Joe Moredock coal at that time in 1918 or 1919, at the time he gave this option to the Piedmont Coal Company?

A. I do not.

Q. You don't know whether you mean that or not?

A. I mean there was an agreement made to deliver certain coal and that coal was included in that agreement.

Q. Do you mean to testify that Mr. Grosscup had an option on the Joe Moredock coal from Joe Moredock in 1918 or 1919?

A. No, sir.

Q. The same is true of the Long coal or Garard coal and Keener coal?

A. Yes.

[fol. 218a] Q. And the Garard option did not affect the John Lantz coal?

A. There was a portion of that covered.

Q. You say that you bought those pieces of coal to round out your block?

A. Yes.

Q. You were not compelled under the terms of the Grosscup option to buy these pieces of coal?

A. I would say yes.

Q. You were compelled to buy them?

A. Yes.

Q. Isn't it true that Grosscup was compelled to deliver them to you if you wanted them?

A. Could not answer that.

Q. Do you have your contract with you?

A. Yes.

A. That is a question of legal interpretation.

Q. I show witness Exhibit No. 16 and ask him what it is?

A. Agreement dated March 31, 1919, from Peter S. Grosscup to Cumberland Coal Company.

Q. I show witness Exhibit No. 17 and ask him what it is?

A. Agreement dated September 28, 1918, between Peter S. Grosscup and Cumberland Coal Company.

Q. Are these all the contracts you have that refer to coal in Cumberland and Greene townships with Peter S. Grosscup?

A. Yes.

Q. Are you able to answer now as to whether or not the terms of these contracts compel the Cumberland Coal Com-[fol. 219a] pany to buy the Joe Moredock coal whether or not it wanted to?

A. There is an agreement here to purchase naturally.

Q. Agreement to receive?

A. Yes, if we made the agreement we would be obligated by it.

Q. It was not in the nature of an option that you could take it or not as you pleased?

A. Could not answer that.

Q. The obligation was not wholly on the part of Mr. Grosscup?

A. Do not know that.

Q. I note on this map Exhibit B, that there is another piece of coal within your block in Cumberland township that you have not yet purchased belonging to the Buckeye Coal Company do you know of that?

A. Yes.

Q. You have not purchased it?

A. No, sir.

Q. Has there ever been any negotiations between your company and the Buckeye Coal Company for exchange of coal to straighten and complete your block there?

A. I believe some tentative suggestions but not definite offer.

Q. You mean there was never a definite offer made?

A. Could not say that.

Q. Do you know why it was not accepted by your company?

A. No.

[fol. 220a] Q. Why it was not accepted by the Buckeye Coal Company?

A. No sir.

Q. Is it not a fact that the Buckeye Coal Company in its attempted transaction offered to trade acre for acre from this front coal and that your company refused that trade?

A. I don't know anything about that.

S. M. Williamson sworn.

Direct examination.

By Mr. Kyle:

Q. Where do you live?

A. Franklin township, Greene County, Pa.

Q. What is your business?

A. Attorney.

Q. In your employment as an attorney have you within the last year represented anyone desiring to sell coal in what is known as the Smith Creek Coal Block?

A. I have.

Mr. Waychoff asks for an offer.

By Mr. Kyle: We offer to prove by the witness on the stand that he has a client who owns 200 acres of Smith Creek Coal assessed in the name of W. J. Kyle, trustee, lying in Franklin, Wayne and Center townships, the part in Wayne being appealed from; that he has made efforts to sell that coal and show the price at which he has tried and

efforts he has made to sell it, and offer to show the bearing [fol. 221a] upon the present market value of the coal in that vicinity.

By Mr. Waychoff: The offer is objected because there is contained within the statement that the coal is an undivided interest in a tract of coal that extends into Center, Franklin and Wayne townships the appeal has only been taken from Wayne and the value of an undivided interest in the three townships could not have any effect upon the issue. Second, because it is not sought to explain the personal or financial difficulties or otherwise of the client or the witness who wants to tell how much—nor that he has attempted to sell the coal at public sale and third, as generally incompetent, irrelevant and immaterial.

By the Court: Overrule objection for the present, note exception, and seal bill for appellee.

By Mr. Kyle:

Q. How much of that coal have you attempted to sell?

A. An undivided interest equal to about 200 acres.

Q. How many acres in the block?

A. 4966 acres.

Q. What efforts have you made to sell it Mr. Williamson?

A. I have attempted to find purchasers.

Q. As what price had you offered the coal for sale?

[fol. 222a] A. I was authorized to offer it at $200.00 an acre with a commission of $10,000.00 for handling it making the purchase price to my client of about $150.00 per acre.

Q. Have you succeeded in selling it?

A. I have not.

Q. Is it still for sale at that price?

A. I would have to consult my client as to that point I think so.

Cross-examination.

By Mr. Waychoff:

Q. The purchase price you claim would be $150.00?

A. Yes.

Q. What would be the purchase price to the man who bought it?

A. $200.00.

Q. It would be immaterial whether you got the $200.00 or the client got it?

A. That is not the understanding. The understanding is that the purchaser was to have the coal on a deed at $150.00 an acre and $10,000 was to go to the party who made the sale.

Q. $200.00 an acre would be the purchase price?

A. No that is not the fact the owner of the coal would receive $150.00.

Q. The coal would cost the purchaser $200.00 an acre?

A. Yes.

Q. You know what the assessment is in Franklin township?

A. I do not.

[fol. 223a] Q. In Center?

A. $50.00 an acre.

Q. And in Wayne it is $85.00 an acre?

A. Yes.

By Mr. Kyle:

Q. State whether or not you placed any restrictions in your offer requiring the party who optioned it to sell it at $200.00?

A. No, sir.

Q. Then the price quoted was about $150.00 an acre?

By Mr. Waychoff:

Q. How did you get your $10,000?

A. We were not to get it.

Q. Who was to get it?

A. The party who negotiated the sale.

Q. Whose coal was it?

A. Jennie Wisecarvers.

Q. She is in very serious financial difficulty?

A. She is.

Q. She is compelled to sell something in order to escape bankruptcy?

A. She needs to sell something.

F. B. Farren sworn.

Direct examination.

By Mr. Kyle:

Q. Where do you reside Mr. Farren?

A. Pittsburgh, Pa.

Q. State, what, if any, connection you have with the Greene County Coal Company?

[fol. 224a] A. Secretary of the Company.

Q. In your capacity as Secretary have you knowledge of the number of shares of stock issued and outstanding by the company and property owned by it?

A. I have.

By Mr. Waychoff: We make the same objection to this testimony in regard to Greene County Coal Company independent stock that we made in the case of Samuel Stern yesterday.

By the Court: Objection overruled for the present, exception noted and bill sealed for appellee.

Q. What does the property owned by the Greene County Coal Company consist?

A. Of 3207 acres of coal in Perry township so assessed to it and for which an appeal has been filed and 270 acres in Wayne township so assessed to it and for which an appeal has been filed.

Q. Does the company have any other assets?

A. No.

Q. How many shares of stock outstanding is there?

A. 31,467 shares.

Q. State what encumbrances there are, if any, against the property of the Greene County Coal Company?

A. There are no liens entered against the property of the company, but the company has been compelled to borrow money to pay taxes.

Q. How much?

A. About $5000.00 or $6000.00 to date.

[fol. 225a] Cross-examination.

By Mr. Waychoff:

Q. What you mean is that being compelled to borrow money is the fact that no provision was made in the organi-

zation of the company for the payment of taxes by selling stock?

A. No such provision has been made.

Q. In other words you have no other property as a company, no income as a company, and whatever taxes are assessed would necessarily have to come from assessments, or borrowing money?

A. Yes.

H. M. JOHNSON sworn.

Direct examination.

By Mr. McClay:

Q. Mr. Johnson you live in Pittsburgh, Pa.?

A. Right.

Q. You are connected with Mr. Henry A. Phillips?

A. I am.

Q. He was compelled to leave here yesterday to attend a meeting at Niagara Falls?

A. Yes.

Q. Are you familiar with the appeals in Greene County?

A. I am.

Q. How many acres in Wayne township, Greene County, Pa., are involved in this appeal?

A. 6904 acres.

Q. In Wayne township?

[fol. 226a] A. Yes.

Q. How many in Perry township?

A. 566 acres.

Q. Do you know who owns that acreage in those townships?

A. He does.

Q. Has that assessment been made by the County Commissioners to the full extent of the acreage owned?

A. It has.

Q. Has any deductions been made for the 6% allowance made to the surface owners, or the owners of coal and surface combined?

A. No deduction has been made from Mr. Phillip's acreage.

By the Court:

Q. On this map the Henry A. Phillips interest as stated is 6900.7?

A. There is about four acres that is assessed to Charles H. Rush and two to Mrs. Roy Smith.

DEWITT HABER sworn.

Direct examination.

By Mr. McClay:

Q. What is your business?

A. Lawyer.

Q. Pretty good one?

A. I don't know.

Q. You are Secretary of the Greene Improvement Company?

A. Yes.

Q. Where does the coal of the Greene Improvement Company lie?

[fol. 227a] A. Undivided interests in Wayne township, and it also has some entire interests in Perry township I believe and other townships in Greene County and some in Center, but the Greene Improvement Company has appealed from the assignment in Wayne and Perry townships. I do not believe an appeal was filed in Perry township. It has filed an appeal from the assessment in Wayne.

Q. How many acres does that appeal cover and how does it compare with the individual owners in Wayne township?

A. The appeal covers I think 288 acres, less the valuation of an acre in Wayne township, being undivided interest, equivalent to that acreage in severalty.

Q. That corresponds with the acreage owned by the Greene Inmprovement Company?

A. Yes.

Q. Has any allowance been made to the Greene Improvement Company?

A. No.

By the Court:

Q. You said it represents undivided interests, is it undivided interests in every instance?

A. No there is one instance the Greene Improvement Company owns the entirety, in Wayne it owns tract colored in purple nearly black, being known to me as Rembrance S. and E. V. Lantz tract; also owns an entire interest in 90.6 acres in a tract of coal near the Greene County Coal Company lands colored in purple, known to me as the Nickeson heir tract. I believe that is all the entire interests it owns in Wayne township.

[fol. 228a] Q. This tract colored purple up in the upper section of Wayne township, marked W. K. K. that has nothing to do with your company?

A. Greene Improvement Company is not interested in that.

Mr. Farren Recalled.

By Mr. McClay:

Q. You are connected with the Greene County Coal Company and also Piedmont Coal Company?

A. Yes .

Q. How long connected with Piedmont Coal Company?

A. Nine years.

Q. You are familiar with its holdings?

A. Yes.

Q. How many acres of coal does the Piedmont Coal Company own in Wayne township, which has been assessed and from which this appeal has been taken?

A. It owns tracts of coal and undivided interests in tracts of coal amounting to 3955½ acres in Wayne township.

Q. That is its full acreage?

A. Yes.

Q. Has that full acreage been assessed?

A. Yes.

Q. Has there been any deduction made of 6% on each acre of coal?

A. No sir.

Q. How many acres of coal does it own in Perry, which [fol. 229a] has been assessed and from which this appeal has been taken?

A. None.

Q. The tracts colored on this map are all assessed in Wayne township?

A. Yes, though part of it may be in Gilmore. I attended to the transfer from the former owners to the Piedmont Coal Company and I found when the coal was severed from the surface the coal was assessed in the same township in which the farm had been assessed previous to that time and there has never been any attempt made to determine how many acres there might be in each township and have the assessment made.

By Mr. McClay:

Q. How many acres of coal does the Greene County Coal Company own in Wayne township, which has been assessed and from which this appeal has been taken?

A. 269 acres.

Q. Does it own all of that?

A. The assessment is upon acreage the actual acreage owned is 269 acres and small fraction.

Q. Has there been any allowance made of 6% deducted on each acre of coal?

A. No.

Q. How many in Perry township?

A. 3207 acres.

Q. Is that the whole acreage of coal owned by the Greene County Coal Co.?

A. Except small fraction one way or the other.

Q. Has that acreage been assessed in full?

[fol. 230a] A. Yes.

Q. Has any deductions been made on account of 6% on each hundred acres?

A. No sir.

Q. Do you know anything about the holdings of W. A. Sifert?

A. I have checked the acreage for Mr. Sifert.

Q. He is one of your associates and one of my partners?

A. Yes.

Q. He has appealed?

A. Yes sir.

Q. How many acres does he have?

A. 138 is shown by the map I believe.

Q. Has the full acreage been assessed to him without any deduction of 6%?

A. I am reasonably sure, but cannot say positively, because I never checked the deed against the acreage.

Q. What other ownerships are there that you have appealed from?

A. The only other acreage for which appeal has been filed is W. J. Kyle, trustee.

Q. Have sworn Whitcomb?

A. No.

W. J. Kyle sworn.

Direct examination.

By Mr. McClay:

Q. You have an appeal in this case?

A. Yes, sir, on coal assessed in my name in Wayne township.

[fol. 231a] Q. How many acres?

A. 261 acres.

Q. Has the full acreage been assessed to you?

A. Yes.

Q. Any allowance been made to you for six percent on each hundred?

A. No sir.

Q. You are one of the appellants in this case?

A. Yes.

Q. Your holdings lie in what township?

A. The holdings appealed from lie in Wayne township.

Charles Albright recalled.

By Mr. McClay:

Q. The H. C. Frick Coke Company own some coal in what township, the assessment from which it has appealed?

A. Greene township.

Q. Little piece up there in Cumberland isn't there?

A. That is the only parcel appealed from the 302 acres in Greene township. We did not appeal from that up in the corner.

Q. You mean that in Cumberland?

A. Yes.
Q. Do you own the whole 302 acres?
A. Yes.
Q. Any more?
A. Not in Greene township.
Q. Is that assessed for the full acreage?
A. Yes, sir.
[fol. 232a] Q. And deductions made for 6% on the hundred acres?
A. No sir.

LLOYD E. POLLOCK recalled.

By Mr. Kyle:

Q. Lloyd yesterday you expressed an opinion as to the market value of coal in Wayne township and were not interrogated or cross-examined as to the sales upon which you base that market value, will you state to the court what knowledge you had of sales in the recent years?

A. As stated yesterday the coal that was sold to Mr. Phillips, which was optioned on the basis of $265.00 an acre was sold in 1924; and early in 1925 that 250 acres was sold to Mr. Phillips at $200.00, later in 1925 I sold 100 acres in the Oak Forest field, about 1500 acres in Wayne township and little over 900 acres in Center township at $150.00 and in March, 1926, I bought myself 75 acres at $80.00 an acre and that was the basis upon which I made the statement that the values in Wayne township had been receding.

Cross-examination.

By Mr. Waychoff:

Q. Counsel for appellants yesterday knew of the purchase by you of this piece of coal at $80.00 an acre?
A. Yes.
Q. You have there a block of coal called the Oak Forest [fol. 233a] field of 900 acres in Center and 1500 in Wayne?
A. Yes.
Q. It is owned, if you know, by how many people?
A. Around thirty different coal owners.

Q. This undivided interest you bought at $80.00 an acre is what interest?

A. It would be an undivided 75 acres in the field, would be around 1/300ths, it is not expressed in fractional interests but is approximately 2500 acres in the field, each 100 acres would be approximately 1/25th in the field.

Q. This that you bought at $80.00 an acre is an undivided 1/300ths approximately of a large block of coal?

A. Yes sir.

Q. That is situate in Center and Wayne Townships?

A. Yes sir.

Q. The part that is situate in Wayne township is farthest west in Wayne township?

A. No farthest north.

Q. It is farthest from Dunkard Creek?

A. Yes.

Q. And the farthest from the railroad at Brave?

A. Yes.

Q. And is the cheapest in Wayne township?

A. No, there is coal in Wayne township that is considered cheaper than that.

Q. Where is it?

[fol. 234a] A. Northern part of the Gilmore line.

Q. Isn't any of this coal along the Gilmore line?

A. No sir.

Q. Nor Jackson township line?

A. No sir.

Q. What did you state yesterday, in your opinion, was the market value of the Wayne townhsip coal?

A. I did not make any valuation. I said it was receding.

Q. Didn't you say yesterday $65.00 to $80.00 an acre at public sale?

A. Yes, that is right.

Q. The lowest coal you ever knew to sell there in the last few years was this undivided interest you bought in the Oak Forest field at $80.00 an acre?

A. Yes, don't know of any sales lower than that.

Q. You have known of many sales at $280.00 an acre? $275.00 to the land owner and $10.00 for commission to the local broker?

A. Know of it.

Q. And beyond that J. V. Thompson got a very substantial commission?

A. I don't know anything about that.

Q. You understood that?

A. No.

Q. How many acres do you know of being sold at $285.00?

A. Over 6000.

Q. Within two or three years?

[fol. 235a] A. No five years.

Q. Started in 1923 and 1924?

A. Yes.

Q. How do you explain the fact that you have known of 6000 acres being sold at $285.00, certain amount at $150.00 and one piece undivided in Wayne and Center at $80.00, with your statement that the popular price is $65.00 to $80.00?

A. I gave that price as today if put up in front of the Court House and I doubt if it would bring that much.

Q. At sheriff's sale?

A. No, not sheriff's sale, nor not forced sale.

Appellants rest.

Russell Lemley recalled.

Direct examination.

By Mr. Waychoff:

Q. I believe you testified you are the Clerk of the County Commissioners?

A. Yes sir.

Q. As such clerk do you have the minutes of the County Commissioners in your hands?

A. I do.

The County of Greene offers in evidence the minutes of the County Commissioners sitting as a Board of Revision and Appeal beginning on March 16, 1928, and subsequent thereto and offer to read into the record the part of said minutes that refers to the assessments from which the ap-

[fol. 236a] peal has been taken. For the purpose of showing manner and mode of the making of the adjustment and revision of the assessment.

By Mr. Kyle: Objected to for the reason only that it is a part of their case in chief in making out a prima facie case, and not a part of the rebuttal, no evidence having been offered by the appellants to question the action or the validity or regularity of the board sitting as a board of revision.

By the Court: Sustain the objection, note exception and seal bill for appellee.

By Mr. Waychoff:

Q. I show witness Exhibit No. 1, being assessment of the Cumberland Coal Company of Pittsburgh, Pa., in Cumberland township, what was the assessment on the first tract of coal of the Cumberland Coal Company in Cumberland township returned by the assessor of Cumberland township?

A. 5523 acres of Pittsburgh coal, valuation $1,491,210.00.

Q. What was the assessment placed upon this same tract of coal by the board of Revision and Appeal?

A. $1,435,980.00.

By Mr. Kyle: Objected to for the reason that counsel for the appellee went into the assessment, and it is the [fol. 237a] final action of the Board of Revision and Appeal from which this appeal is taken, and it is immaterial at this point whether they reduced it or increased it.

By the Court: Objection over-ruled, for the present, exception noted and bill sealed for appellants.

By Mr. Waychoff:

Q. What is the second tract assessed?

A. 256 acres of Pittsburgh coal, valuation $69,120.00.

Q. What was the assessment placed upon this same tract by the board of Revision and Appeal?

A. $66,560.00.

Q. What was the third tract?

A. 3458 acres of Pittsburgh coal, valuation $933,660.00.

Q. Valuation by Board of Revision and Appeal——

A. $899,080.00.

Q. I show witness Exhbit No. 2, being assessment of Cumberland Coal Company in Carmichaels Borough and

ask him how many acres of coal are assessed to Cumberland Coal Company in Carmichaels Borough?

A. 38.9 acres.

Q. At what assessment was this return by the assessor of Carmichaels Borough?

A. $11,670.00.

Q. By the Board of Revision and Appeal?

A. $10,114.00.

[fol. 238a] Q. I show witness Exhibit No. 3 being the assessment of the Cumberland Coal Company in Greene township and ask him how many acres of coal are assessed to the Cumberland Coal Company in Greene township?

A. $11,956.66 acres of Pittsburgh coal.

Q. At what figure was the assessment of this coal returned by the assessor?

A. $2,690,248.00.

Q. At what was it fixed by the Board of Revision and Appeal?

A. $2,690,248.00.

Q. In other words they did not change or lower that assessment?

A. They did not.

Q. Exhibit No. 15, being assessment from the H. C. Frick Coke Company in Greene township will ask how many acres of coal are assessed to the H. C. Frick Coke Company?

A. 302 acres of Pittsburgh coal.

Q. At what assessment was it returned by the assessor?

A. $67,950.00. And by Board of Revision and Appeal $67,950.00.

Q. It was not changed?

A. It was not.

Q. I show the witness Exhibit No. 14, being the assessment of the Greene County Coal Company of Pittsburgh, Pa., in Perry township and ask the witness how many acres of coal were assessed to the Greene County Coal Company in Perry township?

A. 3207 acres.

[fol. 239a] Q. At what figure were they assessed by the assessor?

A. $400,875.00.

Q. At what figure was it assessed by the Board of Revision and Appeal?

A. $352,770.00.

Q. I show witness Exhibit No. 5, being the assessment of Cumberland Coal Company in Wayne township, Greene County, Pa., and ask him how many acres of coal are assessed to Cumberland Coal Company in Wayne township, Greene County, Pa.?

A. 6012 acres.

Q. What figure assessed as returned by the assessor?

A. $751,500.00.

Q. At what figure did the Board of Revision and Appeal fix the assessment?

A. $510,980.00.

Q. I show witness Exhibit No. 10-D, being the assessment of Ella K. Fordyce in Wayne township and ask him how many acres are assessed to her?

A. 77 3/5 acres.

Q. At what figure was this coal assessed by the assessor?

A. $9,662.00.

Q. Is that a correct assessment as shown by that record?

By Mr. Kyle: Object to that question.

[fol. 240a] By the Court: Objection overruled, exception noted and bill sealed for appellants.

Q. Is that the correct figure there?

A. As returned by the assessor.

Q. Do you have any other record in your office that will show whether or not that is correct or is an error?

A. I do have.

Q. I show witness Exhibit No. 9, being assessment of Greene County Coal Company in Wayne Township and ask how many acres of coal are assessed to the Greene County Coal Company in that township?

A. 270 acres.

Q. At what figure was this property assessed at by the assessor as returned?

A. $33,750.00.

Q. By the Board of Revision and Appeal?

A. $22,950.00.

Q. I show witness Exhibit A, being assessment of Greene Improvement Company of Pittsburgh, Pa., in Wayne town-

ship and ask how many acres assessed to the Greene Improvement Company?

A. 289 acres.

Q. At what figure was this property assessed by the assessor, as returned?

A. $36,125.00.

Q. At what figure did the Board of Revision and Appeal fix this assessment?

A. $24,565.00.

Q. I show witness Exhibit 12, assessment of W. J. Kyle, [fol. 241a] trustee, in Wayne township and ask him how many acres are assessed to W. J. Kyle, trustee?

A. 261 acres.

Q. At what figure was it returned by the assessor?

A. $32,625.00.

Q. At what figure by the Board of Revision and Appeal?

A. $22,185.00.

Q. I show witness Exhibit No. 10-A, being assessment of R. E. Kent of Waynesburg, Pa., in Wayne township, and ask him how many acres of coal are assessed to R. E. Kent?

A. 47.07 acres.

Q. At what figures was this coal assessed by the assessors as returned?

A. $5,896.00.

Q. At what figures was this assessment placed by the Board of Revision and Appeal?

A. $4,000.00.

Q. I show witness Exhibit No. 10, being an assessment of Mary K. Mapel, in Wayne township, and ask him how many acres of coal is assessed to Mary K. Mapel?

A. 77 3/5th acres.

Q. At what figure was this coal assessed by the assessor as returned?

A. $9,700.00.

Q. At what figure by the Board of Revision and Appeal?

A. $6,596.00.

Q. I show witness Exhibit No. 10-C, being the assessment of Harriett McDonald of Brave, Pa., in Wayne town- [fol. 242a] ship, how many acres is assessed to her?

A. 77 3/5th acres.

Q. At what figure was this coal assessed by the assessor as returned?

A. $9,700.00.

Q. At what figure was this assessment fixed by the Board of Revision and Appeal?

A. $6,596.00.

Q. I show witness Exhibit No. 6, assessment of the Piedmont Coal Company of Pittsburgh, Pa., in Wayne township, and ask him how many acres of coal are assessed to that company in Wayne township?

A. 3955 acres.

Q. At what figure returned by the assessor?

A. $494,400.00.

Q. At what figure was this assessment placed by the Board of Revision and Appeal?

A. $336,192.00.

Q. I show witness Exhibit No. 11, being the assessment of William A. Sifert, in Wayne Township, and ask him how many acres there are?

A. 138 acres.

Q. At what figure assessed?

A. $17,250.00.

Q. At what figure was it placed by the Board of Revision and Appeal?

A. $11,750.00.

Q. I show witness Exhibit No. 7-B, being the assessment of Mrs. Roy Smith in Wayne township, and ask how many acres of coal is assessed to her?

A. 5½ acres.

[fol. 243a] Q. At what figure was this coal assessed by the assessor?

A. $687.00.

Q. By the Board of Revision and Appeal what figure did they place upon it?

A. $467.00.

Q. I show witness Exhibit No. 7-A, being the assessment of Charles H. Rush in Wayne township, how many acres assessed to him?

A. 32 1/5 acres.

Q. At what figure was this assessed by the assessors?

A. $4,025.00.

Q. What figure was this assessment placed at by the Board of Revision and Appeal?

A. $2,737.00.

Q. I show witness Exhibits Nos. 7-A and 7-B, assessments to Charles H. Rush and Mrs. Roy Smith and ask him if they are two of the assessments from which Mr. Henry A. Phillips appealed?

A. They are. He is the owner of these two tracts although they are assessed in their names.

Q. I show witness Exhibit No. 13, being assessment of Henry A. Phillips in Perry township, how many acres in this assessment?

A. 566 acres.

Q. What value was this coal assessed by the assessor as returned?

A. $70,750.00.

Q. At what figure was this assessment placed by Board of Revision and Appeal?

A. $62,250.00.

[fol. 244a] Cross-examination.

By Mr. Kyle:

Q. I show witness Exhibit No. 10-D, assessment of Ella K. Fordyce in Wayne township and ask him how many acres in this assessment?

A. 77 3/5 acres.

Q. I notice the figures are $9,652.00 is that correct?

A. It is not.

Q. What figures should be there, what are the correct figures?

A. $6,595.00.

Q. Is that the figure as placed by the Board of Revision and Appeal?

A. It is.

Q. At what figure was the return made by the assessor?

A. $9,622.00.

Q. I show witness Exhibit No. 10-B, being assessment of W. T. Kent, Brave, Pa., and ask him how many acres are assesed to him?

A. 77 3/5 acres.

Q. At what figure were they placed by the assessor?

A. $9,700.00.

Q. At what figure by the Board of Revision and Appeal?
A. $6,596.00.

[fol. 245a] J. N. Scott recalled.

Direct examination.

By Mr. Waychoff:

Q. Mr. Scott as a member of the Board of Revision and Appeal of Greene County, I wish you would explain to the Court the method by which the Board of appeal undertook to and did revise and adjust the triennial assessment of 1928?

Mr. Kyle asks for an offer.

By Mr. Waychoff: We offer to prove by the witness on the stand that he is a County Commissioner of Greene County, Pa., and a member of the Board of Revision and Appeal, for the triennial assessment for 1928, and to show by him the methods followed by the Board of Revision and Appeal in investigating the values of the Pittsburgh or River Vein of coal in the various townships of Greene County and all the other property of the County, the investigations made and how they were made and how the figures of the final assessment were arrived at. This for the purpose of showing the Court the way in which the assessment was approached and carried out.

By Mr. Kyle: Objected to as incompetent, irrelevant and immaterial.

By the Court: Overrule objection for the present, note exception and seal bill for appellants.

[fol. 246a] A. It took probably a month or so to study the situation and confer with different men interested in the coal business, especially some of the men who are the companies, represented here in this appeal. We had representatives of the Buckeye, Crucible, Emerald Coal and I think the Cumberland Coal Company too, there was so many I cannot recall them all. I think we had conversations with the principal ones who are appealing from our decision, not only once, but perhaps several times.

Q. Put into the record Mr. Scott the names of the men with whom you conferred as to this assessment?

A. Buckeye, Mr. Lingle, and Gates particularly. Crucible Mr. Simmons and their Secretary from Pittsburgh, Pa., and another one or two. Also with Mr. Kyle and some representatives of the companies he represents. With Mr. Montgomery and the companies he represents; and talked with different other members of coal companies, benig acquainted with quite a lot of the operators on the Monongahela River in particular about this assessment and about the coal business in general in the years gone by up to the present.

Q. Aside from your conferences with the various companies interested what other items did you investigate?

A. Sales of coal which they reported to us and their knowledge of the coal situation for the last 20 or 25 years since it became to develop and purchase and sales of coal, some of which I have been connected with myself.

Q. How long did you take from March 16, 1928, the time [fol. 247a] of beginning until you finished this assessment?

A. I think over a month. I believe the date is 24th of April, I won't be qualified. About the next thing we did as a final conclusion on the coal problem

Mr. Kyle asks for an offer.

By Mr. Waychoff: We now propose by the witness to prove by him that he is a resident of Cumberland township, has been all his lifetime practically; that he has been acquainted with the coal sales and purchases in Cumberland township for many years and with the general situation as to coal development by mines and otherwise and thereafter to ask him what in his opinion the market value of the coal of Cumberland township at public sale after due public notice to a willing purchaser and from a willing seller is.

By Mr. McClay: Objected to for the reason that he has not shown himself qualified and it is not shown that he is. I believe it has been ruled by the Supreme Court of Pennsylvania that a man cannot testify what the true value of his own property is.

By the Court: Objection over-ruled, exception noted and bill sealed for appellants.

By Mr. Waychoff:

Q. Where do you live?

[fol. 248a] A. Cumberland township since 1911.

Q. Where did you live before that?

A. Jefferson township.

Q. How long did you live in Jefferson township?

A. About 50 years.

Q. You lived in Jefferson all your life except 11 years in Cumberland?

A. Yes, sir.

Q. What is your occupation?

A. Farmer when at home.

Q. Did you ever buy and sell any Pittsburgh or River Vein of coal during that time?

A. Yes.

Q. More than once?

A. Not so many purchases I have sold different blocks. Yes, more than one.

Q. In Cumberland township?

A. One deal in Cumberland township and the others in Jefferson.

Q. Are you acquainted with the development of the coal business in Cumberland township for the past 20 years?

A. I think I am.

Q. Are you acquainted with the mining conditions in Cumberland township as they have developed?

A. Yes.

Q. Acquainted with the various purchases and sales in Cumberland for the past 15 years?

A. Quite a few of them.

[fol. 249a] Cross-examination.

By Mr. McClay:

Q. You say your business is a farmer Mr. Scott?

A. That is one of them.

Q. What sales have you any knowledge of having been made in the past three years?

A. All of Cumberland township has been practically bought up for years the most recent one I know of is the Garard sale in South Muddy creek in Cumberland.

Q. When was that made?

A. In the last year or two.

Q. The sales to which you refer were those made five or six years ago?

A. Of course I am familiar with the sales farther back than that.

Q. You have no knowledge of sales in the past three years?

A. Garard is the last one.

Q. That is only one sale?

A. That is all the one I recall in Cumberland township.

Q. You have not been in the business of buying and selling?

A. Not extensively.

Q. When was the Cumberland sale made by you?

A. That was made in 1918 I think.

Q. When was the Jefferson sale made?

A. Same time.

Q. About 1918 or 1919?

[fol. 250a] A. Yes.

Q. You have not made any sales since that time?

A. That is all I had down there.

Q. What other property have you bought and sold?

A. I have not sold very much, bought some in Wayne, Center, Monongahela and Richhill townships.

Q. In your own right?

A. Yes.

Q. How many do you have in Wayne?

A. Sixty some acres.

Q. Ho many in Center township?

A. I think 36 acres.

Q. How many in the other townships?

A. Part of it is undivided interests and I cannot recall just how much.

Q. What is the other township you mentioned?

A. Monongahela and Richhill.

Q. Have you made any attempts to sell it?

A. I have had it optioned.

Q. Have you succeeded in selling any in the past three years?

A. No.

Q. Is it for sale?

A. Sure.

By Mr. McClay: Object to the competency of the witness to testify.

[fol. 251a] By the Court: Objection overruled, exception noted and bill sealed for appellants.

By Mr. Waychoff:

Q. Mr. Scott what in your opinion is a fair market value of the Pittsburgh or River Vein of coal in Cumberland township at public sale after due public notice?

A. I think it is above the double the price it is asessed at.

Q. What is your idea of it?

By Mr. Kyle: Object to the question as stated because it does not limit the purchase to any part of the township and there has been much testimony here as to difference in values in different sections of the township.

By the Court: Objection over-ruled, exception noted and bill sealed for appellants.

A. The conditions of the sale would make a vast difference if the sales were in the same condition of free buyer and seller after the coal has been sold I believe that whole township would sell for $750.00 per acre.

Q. What in your opinion is the fair market value of the Pittsburgh or River vein of coal in Cumberland township per acre at public sale after due and public notice?

A. Not less than $600.00.

[fol. 252a] By Mr. McClay:

Q. That testimony of yours extends to the whole township whether it abuts upon the river or extends eight miles back of the Cumberland township line?

A. That is the average of the township.

Q. Upon what do you base that average you know of no sales in the past three years?

A. One that was toward the back edge.

Q. You know of no one now willing to purchase any coal in Cumberland township?

A. As far as I know there is no more; there is none for sale.

Q. How do you know that?

A. Why would there be when it is in the hands of an operating company.

Q. What coal is in the hands of an operating company?

A. Crucible and Buckeye.

Q. Have the Cumberland Coal Company any operations?

A. No, I count you the same, because you are allied with the U. S. Steel.

Q. We assume the H. C. Frick and U. S. Steel have they any operations at all?

A. Not that I know of.

Q. The sales made to them occurred in 1918 and 1919?

A. The only coal loose in that township that I know of has been bought since that time.

Q. Where was that?

A. The Stephens coal in Khedive.

[fol. 253a] Q. Who bought that?

A. I don't know.

Q. Those were small lots?

A. Not big.

Q. Khedive was a village?

A. Yes, but it was not in Khedive I said at Khedive.

Q. Who was present at these consultations you had with the Cumberland Coal Company and some others who are appellants here? Who represented the Cumberland Coal Company?

A. I figured Mr. Kyle represented you.

Q. You did not see Mr. Gates, William Gates, Secretary of the Company in charge of real estate?

A. Not that Mr. Gates.

Q. Did you see Mr. Farren who represents the Piedmont?

A. I have talked to him at different times.

Q. Did you give any instructions to the assessors as to the figures they were to put on?

A. No.

Q. They put on their own figures and presented them to you?

A. Yes.

Q. Do you know whether the figures they put on are the ones you put on with reference to the needs of the township for taxes?

A. They wanted to spend a certain amount of money toward that, the township authorities, school directors, etc. and the County.

A. That had no bearing on the general assessment of the County.

[fol. 254a] Q. Did you talk it with the township authorities?

A. I believe some of them have talked to us very few.

Q. Did you try to ascertain their necessities?

A. No, sir.

Q. Who else talked to you about it?

A. Topic of general discussion I don't know.

Q. Didn't you have conversation with people who suggested they thought it should be raised in Greene township, and what it ought to be raised?

A. The assessor raised Greene township on his own initiative without any direction from the Board of Commissioners as far as I know.

Q. Your board was aproached on the same subject of increasing the assessment in Greene township by people who are not connected in any way with appellants in this case?

A. I don't think approached is the right word. In conversation there were men who stated their opinion.

Q. I mean to say you were spoken to about it?

A. I have talked that over with different men of course. I stated here yesterday that has been the subject of conversation when I was at the Buckeye Coal Company office for instance.

Q. With Mr. Lingle?

A. Yes.

Q. Ever talked it over with anybody else than Mr. Lingle?

A. I said it was topic of conversation.

Q. Where on your streets or in the office?

A. In the office perhaps.

[fol. 255a] Q. You had an interest in Greene township, you are connected with the other coal companies that talked the matter over with you?

A. I don't recall discussing it with any coal men.

Q. Any bankers?

A. No.

Q. With whom did you discuss it?

A. I said in common conversation with the rest of the board and with almost everyone we talked to we agreed that Greene township was out of proportion with other townships.

Q. So you don't agree with the expert witnesses who have been called here?

A. Not in everything they have said.

Q. You consulted with Mr. Kyle, consulted with Mr. Farren what did they suggest, what was their proposition?

A. Of course they contended we were valuing the coal too high.

Q. Did you follow any suggestions they made?

A. It does not show it.

Q. Results did not prove it?

A. No, it does not show it.

Q. What did you regard the coal fronting on the River in Cumberland township would be worth?

A. Depend on what purpose you would hold it. Certain amount of river front is an advantage.

Q. How much river front?

A. Sufficient for plant.

Q. Would not need any more than that?

A. Do not see why they would.

Q. If we were trying to get into the coal how much river [fol. 256a] front would you allow for a particular value in excess of the coal back?

A. Usually only enough for one opening that does not take very much room.

Q. How much does it take?

A. Half mile of river front would be all any company could use.

Q. Extending back how far?

A. It would be no disadvantage how much they had. I am not going to give you inside plan of a coal mine.

Q. What is your idea of the value of coal fronting on the river and to what extent going back that value is?

A. The value of coal on the river where it is navigable is undoubtedly greater than that back especially if the company ships it by water. Buckeye puts itself in the same class as Mather because they both ship by rail and Mather is no ways near the river and in that case the river does not seem to be an advantage to Buckeye except the coal is nearer the surface there.

Q. Now Mr. Scott I am trying to get at what purchasers would want and what would enter into their mind in making purchases of coal. You have talked about the average price of $600.00 will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

A. The front coal might get very valuable. It certainly would not be less than $1000.00, it would depend on circum-

stances, by carrying the the front at $1000.00 and the back at $500.00 it would get an average of $750.00.

[fol. 257a] Q. What purchasers do you know today, that afforded the most ample opportunities, would give $1000.00 an acre for that coal?

A. I do not pretend to be posted on that because it is all gone and no data I could give you who the possible purchaser would be.

Q. Suppose the company would become insolvent?

A. The U. S. Steel would possibly take it up.

Q. At a $1000.00 an acre?

A. If they could not get it for less of course.

Q. What connection did you ever have with the U. S. Steel?

A. None at all.

Q. When you express an opinion of that character it is pretty nearly a guess isn't it?

A. Theory like your experts.

Q. Do you know Mrs. Rowe's property?

A. I guess.

Q. That is not U. S. Steel?

A. I don't know.

Q. Don't you know it stands on the——

A. I never noticed it.

Q. It fronts on the river?

A. I never understood it did.

Q. There is quite considerable coal on the river that does not belong to U. S. Steel, Mather or Crucible isn't there?

A. I do not claim to be particularly acquainted with every foot of coal along there, but I think between Crucible and Nemacolin there is one block of coal belonging to United States Steel.

[fol. 258a] Q. That belonged to Monessen Coal and Coke Company didn't it?

A. Between Buckeye and the large Pittsburgh Steel, yes.

Q. It is almost impossible for a man who has not been engaged in the building or construction of mines or plants, means of transportation to and from its plants to fix a value upon coal, that is, a value to be fixed in accordance with the statute, that would sell at its actual value after due notice?

A. All we have is actual sales. We consider that the best and only way to judge the price of coal.

Q. You have given us your best judgment and after all it is a poor guess?

A. Of course it is not a guess of what price it sold for.

Q. In five or six years?

A. No last year I refer to the Long coal. We considered the coal surrounding that.

Q. It has been stated here that it has been impossible to mine a block of that size it would not pay to sink the shaft? Would you want a man to buy five or six square feet in the middle of this lot?

A. If it was 500 feet down it would not hurt.

By Mr. Waychoff:

Q. Do you have any knowledge of the same kind regarding the coal of Greene Township?

A. Yes.

Q. Upon what is that based?

A. Sales.

[fol. 259a] Q. What is your opinion is the fair market value at public sale after due public notice, of Pittsburgh or River Vein of coal in Greene township, Greene County, Pa.?

A. Just about double what we assessed it at, that is $450.00.

By Mr. McCray:

Q. Do you know whether in 1919—was coal high priced on the market?

A. Speaking of price that is comparative.

Q. Do you mean coal product or coal acreage?

A. Just about normal perhaps, perhaps more active on account of the more active prices.

Q. What made the market active at that time?

A. Demand and the fact they did not have it all bought up.

Q. Now Mr. Scott don't you know perfectly well that was the end of the world war?

A. Well there was a coal market such as this world has never seen before. I know the period after the war coal was very high $2.50 f. o. b.

Q. Do you know that beginning in April 1917, the United States and Germany and Austria were at war?

A. I remember that.

Q. Do you know that the government at Washington was urging everybody to get into the production business in the way of mining coal, steel and agriculture and producing products for feeding peope such as was never known at any time in the United States?

[fol. 260a] A. That is true.

Q. That produced the increase in the market for virgin coal?

A. I presume it did.

Q. After that period ceased, which was in what year?

A. My idea was in 1921 was the highest time.

Q. After that time there was a terrible lull in the coal business?

A. Something of a lull yes.

Q. And today you cannot sell a bit of coal on the market for more than $1.35 a ton?

A. I think there is not much higher price than that for certain grades of coal you are giving the lowest price.

Q. No the average price?

A. I have had men show me their prices and if I recall it that is one of the lowest prices.

Q. As in connection with your busines as Commissioner you have kept in touch with the records and it has been reported to you what deeds have gone on record?

A. I do not pay much attention to that.

Q. It is the duty of the Recorder to report to you?

A. Yes, and the clerk takes care of that.

Q. You look them over?

A. Not unless some attention is called to it.

Q. Don't you know the Piedmont Coal Company has not sold an acre of coal in the past six years?

A. I am not posted in that at all. I know there has been [fol. 261a] no particular demand for coal in Greene County in the past three years.

Q. Coal acreage?

A. Yes. At places where coal is especially valuable it has all gone to the bigger companies, therefore, there could not be any particular demand for acreage, farther back I will admit it is dull.

Q. I am asking you if there is any general demand for coal acreage in Greene County?

A. I don't know that there is.

Q. Do you know that there is not?

A. No, I don't. I know of sales that are supposed to be made and almost made.

Q. In 1918 and 1919 the Commissioners in Greene County fixed $150.00 an acre on the coal?

By Mr. Waychoff: Object to this question. It has been ruled out.

By the Court: It is ruled out.

Q. Has the value of coal increased or diminished since 1920?

A. It may have decreased in spots. I do not believe it has decreased in townships bordering on the river or front of the county.

Q. It has not decreased?

A. Probably in the back townships.

Q. Has it decreased in Cumberland and Greene townships?

A. The sales do not show it.

Q. You say you do not keep in touch with the sales?

[fol. 262a] A. What sales I speak to you of are the sales I am familiar with the sales back 8 or 10 years ago.

Q. Do you know positively well the value of coal today is not what it was 8, 9 or 10 years ago?

A. I have to take the sales of coal in Cumberland and Greene in the last two or three years it does not show any decrease.

Q. How many?

A. It does not make any difference how many there is not any for sale.

Q. In Greene you specify the Long, Keener and Lantz, that 's all you know about?

A. That is all I know about.

PAUL DEBOLT recalled.

By Mr. Waychoff:

Q. Where do you live?

A. Waynesburg, Pa.

Q. Where did you live before you moved to Waynesburg?

A. Cleveland.

Q. What part of Greene County were you born and raised in?

A. Born in Monongahela township and lived in Greensboro, Pa.

Q. Are you acquainted with the coal business, the development of the Pittsburgh or River Vein of coal and mines along the Monongahela river, the purchase and sale of coal in Monongahela, Dunkard and Greene townships?

A. I am to some extent.

[fol. 263a] Q. How long have you been acquainted with and familiar with the transactions of the Pittsburgh or River Vein of coal in these three townships?

A. It must have been the last four years.

Q. Are you able as a result of your knowledge and conditions of the coal business in Eastern Greene County and knowledge of sales of Pittsburgh seam of coal and purchases thereof to express an opinion as to market value of that coal in various townships at public sale after due public notice?

A. I think I am I think I have listened to as about as many arguments as anyone else in the last four years.

Cross-examination.

By Mr. McClay:

Q. What sale do you have knowledge of?

A. Lantz, Moredock and Keener that is all in Greene township.

Q. How about Cumberland township?

A. About the only sale I know of is that Garard coal.

Q. Those are the tracts of coal that was testified to here this morning?

A. I think so.

Q. Do you know of any others?

A. Don't think there has been any sold.

A. Have you sold any in the last three years?

A. No sir.

Q. Any knowledge of sales or purchases of coal in the last three years?

[fol. 264a] A. Not of Pittsburgh coal.

Q. Did you ever buy or sell any virgin coal lands?

A. Not in the last three years I had some experience in Fayette County with some coal.

By Mr. McClay: Object to the competency of this witness.

By the Court: Objection overruled, exception noted and bill sealed for appellant.

By Mr. Waychoff:

Q. What in your opinion Mr. Debolt is the market value of the Pittsburgh or River Vein of coal in Cumberland township at public sale after due public notice?

A. I think at least $600.00 is the average price.

Q. What in your opinion is the fair market value of Pittsburgh or River Vein of coal in Greene Township, Greene County, Pa., at public sale after due public notice?

A. At least $450.00.

Q. Why do you say at least these amounts?

A. I don't think it should be any less it might be more.

Q. It does not make any difference to your judgment whether coal lies 6, 8, or 10 miles back, or right along by the side?

A. Yes, but if you have an opening to the river you don't need so much river frontage.

[fol. 265a] Q. Do you know that after you get three miles back it costs 5c more a mile to transport a ton of coal?

A. Yes.

Q. Yet that would have no effect whatever upon the value of coal?

A. I said the average price.

Q. What would you call coal worth three miles back in Cumberland township fronting on the river?

A. I would say it was worth at least $500.00.

Q. What would you call the coal worth three miles back from the river and extending back to the township line?

A. About the same price.

Q. Now Mr. Debolt you say coal in Greene township which lies three miles back from the river and abuts on Monongahela is worth $450.00?

A. Yes, sir.

Q. Upon what do you base that reason?

A. I might have been wrong in the first statement as to that $500.00 three miles back from the front. I meant the

average price of $600.00 over the township, Cumberland township.

Q. I am asking you about *about* Greene township?

A. Well Greene township is $450.00.

Q. That Monongahela Township is it worth more than Greene township?

A. Well Greene township I would consider worth as much as the back end of Cumberland.

Q. Why wouldn't you make the back end of Cumberland $260.00 when you consider it?

[fol. 266a] A. Well Cumberland township fronts on the river and Greene township does not front on the river.

Q. You say you regard Greene township equally valuable with the rear of Cumberland is that right?

A. It is nearly that much.

Q. In fact you don't know anyone that is willing to buy any coal there if these large companies are willing to sell?

A. I think there is a demand for sale down there but there is none to sell.

Q. Isn't it after all Mr. Debolt only a mere guess on your part as to the actual value of that coal at sale after due public notice?

A. No sir it is not. It is my opinion after listening to the arguments put up by the coal people and we had to make a decision on it.

Q. You made the decision?

A. Yes.

Q. Who are the people who have spoken to you about increasing the assessment in Greene township?

A. No, it was people talking to me about Greene township not being high enough on the last assessment they did not come to me and tell me I got it from their conversation.

Q. Who were some of them?

A. Mr. Boyd from the Pittsburgh Steel, Mr. Lingle from Nemacolin.

Q. What interest had they in our affairs?

A. They had no interest they just mentioned it.

[fol. 267a] Q. They don't own a foot in Greene township?

A. No just you fellows own it all.

Q. Any bankers talked to you?

A. No sir.

Q. Was it suggested to you at the instance of a certain banker?

A. No sir that is not; no banker.

Q. Did any one connected with Mr. Hillman ever speak to you about it?

A. I am not sure about that, but I think they did.

By Mr. Waychoff:

Q. Did anyone sitting at the table over here talk to you about it at the same time as Mr. Hillman did?

A. Mr. Kyle and Mr. Farren talked about it in a round about way.

Q. Do you remember all the men that were there?

A. I remember a lot of the gentlemen.

Q. Do you remember whether Mr. McClay was here?

A. Yes.

Q. All these other fellows here?

A. Not at the same time.

Q. Mr. Boyd was not here that day?

A. I think he was.

Q. He did not express any opinion in our presence?

A. No he mentioned that on August 2, I remember that very well.

Q. Mr. Hillman was not here on that day.

A. No sir, I never saw Mr. Hillman.

[fol. 268a] Q. A representative of Mr. Hillman was here that day?

A. Yes, I talked to him.

Q. My friend, Mr. Whittaker of Crucible Fuel spoke to you about it and not one of them was interested in a foot of Greene County coal?

A. No.

By Mr. Waychoff:

Q. At the time you were cross-examined by Mr. McClay about the price of the front coal in Cumberland township I did not catch what you said how much an acre it was?

A. I think that coal in the front should be worth at least $1000.00 an acre.

Q. The average of the township $600.00 an acre?

A. Yes.

JOHN BARCLAY sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Cumberland township.
Q. Where did you live prior to that?
A. State of Iowa.
Q. Born and raised where?
A. Monongahela township.
Q. Are you acquainted with the general situation of the coal business and coal development in Monongahela, Cumberland and Greene townships?
A. To some extent yes.
[fol. 269a] Q. Are you acquainted with the purchases and sales of coal in those townships in the last few years?
A. Yes.
Q. Have you been so acquainted with the general purchases and sales of coal generally in the last years?
A. Quite a number of years, ever since development started in Greene County.
Q. Are you prepared to fix the market value of the Pittsburgh, or River vein of coal in Cumberland township at public sale after due public notice?
A. Yes, by recent sales.
Q. Are you prepared to fix the fair market value of the Pittsburgh or River Vein of coal in Greene township, Greene County, Pa., at public sale after due public notice?
A. Only by recent sales.

Cross-examination.

By Mr. McClay:

Q. What recent sales have you known in Greene township?
A. The ones referred to Lantz, Moredock and Keener sales.
Q. The fact is that Cumberland Coal Company own practically all the rest of the coal?
A. Supposed to yes.
Q. You don't know of any general selling price?

A. No other coal there to be sold.

[fol. 270a] By Mr. McClay: Object to the competency of the witness.

By the Court: Over-rule objection, note exception and seal bill.

By Mr. Waychoff:

Q. What in your opinion is the fair market value of the Pittsburgh or River Vein of coal in Cumberland township, Greene County, Pa., at public sale, after due public notice?

A. Prior to the most recent sale which I have known of I would say $600.00. Since that I would say $700.00.

Q. What in your opinion is the fair market value of the Pittsburgh or River vein of coal in Greene township, Greene County, Pa., at public sale after due public notice?

A. I would not think less than $450.00, basing it on recent sales made in this township.

By Mr. McClay:

Q. You think then that the Lantz farm was sold at much below its real value?

A. It would seem so according to the sales made in this township.

Q. How long ago?

A. Within the past four to six years back.

Q. You fix the price at $450.00 and the Lantz coal sold at $400.00, they were satisfied then?

A. I don't know as to that.

Q. The Moredock sale was of how many acres?

[fol. 271a] A. Something near 500 acres?

Q. At what price did they sell for?

A. I understand the price quoted $600.00. I understood from Mr. Moredock $500.00.

Q. When was that?

A. I don't know the date.

Q. On those two sales you pass your opinion?

A. I pass my opinion on these sales.

Q. When did you come back from Iowa?

A. In 1921.

Q. You did not keep in touch with what was going on prior to that time?

A. By being present in this county from year to year.

Q. You purchased and sold coal here did you?
A. No, sir.
Q. Are you a licensed dealer in coal lands?
A. Real estate.
Q. Houses and lots or farms?
A. All kinds of real estate.
Q. Yet you based an opinion upon the sales of two or three tracts which the Cumberland Coal Company bought from various owners from different portions of the field which they control?
A. Yes.
Q. You say they fixed the actual market value of that coal if sold after due public notice?
A. Yes, sir.

By Mr. Waychoff:

Q. Mr. McClay asked you if John Lantz and several others were not satisfied that the Cumberland Coal Company bought their 400 acres? Isn't it true they bought 400 [fol. 272a] acres outside of that township in order to get that piece of coal?
A. That is my understanding.

By Mr. McClay:

Q. Where did you get that understanding?
A. Knowing where Mr. Lantz's holding- were.
Q. It was all in one contiguous tract?
A. Yes, part of it was in Greene township and part of it in another.

By Mr. Waychoff: The appellee offers in evidence Exhibit No. 16, being an agreement, dated March 31, 1919, between Peter S. Grosscup and the Cumberland Coal Company in evidence, for the purpose of showing the sale of a large part of the Pittsburgh or River Vein of coal in Cumberland township, Greene township, Whiteley township, Dunkard township at the price of $600.00 an acre.

By Mr. McClay: Objected to as incompetent and in no way affecting the value at the present time.

By the Court: Overrule objection, note exception and seal bill for appellants.

By Mr. Waychoff: County of Greene offers in evidence Exhibit No. 17, agreement between Peter S. Grosscup and Cumberland Coal Company, dated September 28, 1918, providing for the sale of a large amount of coal of the Pitts- [fol. 273a] burgh or River Vein in Cumberland, Dunkard, Greene and Monongahela townships, Greene County, Pa., for the price or sum of $600.00 an acre, for the purpose of showing said sale.

By Mr. McClay: Objected to as incompetent, irrelevant and immaterial and it is too remote in point of time and is no evidence of price of coal for purpose of taxation.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

Oma Cree sworn.

Direct examination.

By Mr. Waychoff:

Q. Mr. Cree where do you live?
A. Cumberland township.
Q. How long have you lived there?
A. 47 years.
Q. All your life?
A. Yes, sir.
Q. What is your occupation?
A. Farmer.
Q. During the last few years have you been acquainted with the development of coal affairs in Cumberland and Greene townships?
A. Yes, sir.
Q. Acquainted with the various sales and purchases of river vein of coal in said township during the last few years? [fol. 274a] A. Yes.
Q. Been acquainted with the development as to operations since the coal business began there?
A. Yes, sir.
Q. Are you prepared by reason of your acquaintance and knowledge to express an opinion as to the fair market value of the Pittsburgh coal in Cumberland township, Greene County, Pa., at public sale after due public notice?

A. I think so.

Q. Are you prepared as a result of your knowledge and experience and acquaintance with the coal business to express an opinion as to the fair market value of the Pittsburgh coal or River vein of coal in Greene township at public sale after due public notice?

A. Yes, sir.

Cross-examination.

By Mr. McClay:

Q. Of what sales had you any knowledge Mr. Cree?
A. My own and the Long sale.
Q. When was that?
A. About 1920 and 1921 my own.
Q. What other sales?
A. The Long farm East of me.
Q. When was that?
A. I would say inside of the last three years.
Q. Any others?
A. Moredock west of me in Greene township.
Q. Any others?
A. Not close to me.

[fol. 275a] By Mr. Waychoff:

Q. What in your opinion is the fair market value of the Pittsburgh or River Vein of coal in Cumberland township, after due public notice at public sale?

A. I would say $650.00 an acre.

Q. What in your opinion is the fair market value of the Pittsburgh or Riven vein of coal in Greene township, Greene County, Pa., at public sale after due public notice?

A. I would consider it worth just as much as in our own township.

Q. How much?

A. $650.00.

By Mr. McClay:

Q. You base that opinion in Greene township on coal that you know has been sold very much below $650.00?

A. No sir.

Q. Whose coal sold at $650.00 in Greene township?

A. I understand the Keener coal sold for $700.00 and the Moredock coal sold for $600.00.

Q. You sold your own coal in 1920?

A. 1920 or 1921.

Q. You only have knowledge since that time of a few sales being made and yet you would be willing to express an opinion that coal in Greene township could be sold if it were at this Court House to an actual bidder after due notice for $650.00?

[fol. 276a] A. I think so.

Q. Why do you think so?

A. From the sales in the last few years since 1920 and 1921.

Q. Have you knowledge of anybody willing to give that price?

A. It is all taken up. It is out of our farmers hands.

Q. I am asking you if you have knowledge of any person or corporation who would buy at that price?

A. No I do not.

Q. Have you bought or sold coal since you sold your own?

A. No sir.

Q. You are not in the business?

A. No sir.

Q. You are a farmer cultivating the soil?

A. Yes sir.

Q. Would you consider the front coal any more valuable than your own coal in Cumberland township?

A. Very little.

Q. It is practically the same value six or eight miles back?

A. I would think so.

Q. The coal in front has very little value over the coal in the rear?

A. Yes.

Q. Although the coal in the rear costs 5¢ for each additional mile of transportation above three miles?

A. I could not say what it would cost.

[fol. 277a] Q. What is the depth of the coal?

A. 616 feet on my farm.

Q. Is it six or seven foot vein?

A. The Pittsburgh or River Vein.

Q. I am asking you how thick the vein is?

A. I could not say.
Q. You know how many tons in one acre?
A. No, I do not.
Q. What you know is about the sales that have been made to the Cumberland Coal Company in the past six or eight years in Cumberland and Greene townships?
A. Yes.
Q. And you know of no other sales to anyone else?
A. No sir.

By Mr. Waychoff:

Q. Did you give any reason why there is no sale for it?
A. It is all out of the original farmers hands and blocked up.
Q. You mean the Cumberland Coal Company now owns it all?
A. Yes.

W. E. Cree sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Jefferson township at the present?
Q. How long have you lived in Jefferson township?
[fol. 278a] A. Less than one year.
Q. Before that where did you live?
A. Born and raised in Cumberland township.
Q. Acquainted with the gradual development of the coal business in Cumberland township, Greene and Monongahela?
A. I think I am.
Q. Acquainted with the development and production in the putting in of mines in the eastern part of the County?
A. Yes.
Q. Are you acquainted with purchases and sales throughout Cumberland and Greene townships?
A. A great many of them.
Q. Does your knowledge and acquaintanceship with these matters enable you to express an opinion as to the market value of the coal Pittsburgh or River vein in Cumberland township at due public sale after due public notice?

A. Yes.

Q. Are you able to express an opinion as to the market value of the Pittsburgh or River Vein of coal in Greene township, Greene County Pa., at public sale after due public notice?

A. I am not so well acquainted with Greene township.

Q. What in your opinion is the market value of the Pittsburgh or River vein of coal in Cumberland township at public sale after due public notice?

A. I would say $650.00.

[fol. 279a] Cross-examination.

By Mr. McClay:

Q. How thick is the vein?

A. Nine foot is what we call it.

Q. Is it nine foot in Cumberland township?

A. I cannot tell you.

Q. Is it four feet?

A. Yes, where I have been it is well up to the nine foot.

Q. Where have you been?

A. In Crucible mine.

Q. How many tons to the acre?

A. I don't know anything about it.

Q. Do you know the character of the coal?

A. Yes.

Q. As to its sulphur contents?

A. No, I don't know the analysis of course.

Q. You don't know whether it is low in ash or high in sulphur?

A. It is generally low in ash but very much higher than Fayette County coal.

Q. What is your business?

A. Farmer, have been a mechanic.

Q. Ever been in the coal business?

A. No sir.

Q. Ever bought or sold coal?

A. I have sold coal.

Q. How has your information been derived?

A. Recent sales and I have followed it.

Q. That is you have heard the gossip?

A. Heard it and I have been right with it, the development, right with it.

Q. What have you been doing?

[fol. 280a] A. Hear and see everything that has been going on.

Q. What particular business have you been in?

A. General mechanic.

Q. Have you read about it in the newspapers?

A. Some.

Q. Where did you get your information about the selling price of the coal?

A. I gathered a good deal of it here. Coal at the Mather mine now sells for $3.00 a ton at the tipple, coal is as high now as it ever was at $2.50 a ton at the pit's mouth.

Q. Don't you know the general selling price of coal in the market in West Virginia and Pennsylvania around here is not exceeding $1.35 a ton at the tipple?

A. I don't know that but I do know that they won't sell you unless you have a permit at $3.00 a ton.

Q. You know Mather Coal is used in connection with the operation of their works in Cleveland?

A. I think it was testified here that all the coal was shipped to another plant.

Q. It was a plant of the Mather Company?

A. I don't know about that it was said it did not go to their plant they bought their coal from West Virginia. They transported their coal to their plant in Ontario.

Q. Is that all you know about the coal business?

[fol. 281a] A. I don't know.

Q. What sales do you know of?

A. I know of these recent sales.

Q. How long have you known of these sales?

A. Ever since they have been consummated.

Q. When was the Lantz consummated?

A. Since last winter.

Q. Who told you about that?

A. I live right in the community.

Q. This took place in Pittsburgh?

A. Yes, we all heard it.

Q. How did you hear it?

A. We have telephones every man.

Q. Is it a matter of general knowledge that Lantz sold his coal at a certain price?

A. It is $400.00.

Q. You only know of one sale down in Cumberland township in recent years?

A. Yes, that is all I know of in Cumberland. I know of the others in Greene just as handy.

Q. What are they Moredock and Keener?

A. Yes.

Q. Is that an undivided interest?

A. I don't know about that.

THOMAS INGRAM sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?

A. Cumberland township.

Q. How long have you lived there?

[fol. 282a] A. I did live a while in Jefferson, and all my life in Cumberland except a few years.

Q. Have you been acquainted with the recent development of coal business in Cumberland township?

A. I think so.

Q. About how long has this been?

A. Well something like 20 years. I could not give you the exact date.

Q. Have you been acquainted for the past 15 or 20 years with the putting in of mines and taking out of coal?

A. Yes.

Q. Have you been acquainted with purchasing and selling of coal in Greene township and in Cumberland township?

A. Not so much in Greene township.

Q. Have you been acquainted with sale of coal and prices paid in Cumberland township for the past few years?

A. Some yes.

Q. Would that acquaintance and knowledge you have in Cumberland township that you have gained qualify you to express an opinion as to the fair market value of the Pittsburgh or River vein of coal in Cumberland township after due public notice?

A. I think it would.

Q. What in your opinion is the fair market value of coal in Cumberland township, Greene County, Pa., at public sale after due public notice?

A. I woud think $650.00 would be about right.

[fol. 283a] Cross-examination.

By Mr. McClay:

Q. You are one of the owners of property that was taken over by the Cumberland Coal Company in 1918?

A. Yes.

Q. In what township?

A. Cumberland township.

Q. You had held that coal for many many years prior to that time without getting an opportunity to sell it hadn't you?

A. No, I sold the coal I cannot give you the date of it you ought to know that yourself.

Q. When you sold it to whom did you sell it?

A. To J. V. Thompson.

Q. How many years before?

A. I cannot give you the exact date four or five years ago.

Q. At what price?

A. It was not sold by the acreage by the lump sum.

Q. What did it average an acre?

A. Around $637.00. We did not survey it the deed calls for 157 acres.

Q. Mr. Inghram what sales do you know of in Cumberland township in the past three years?

A. I believe the Long coal was sold for $700.00.

Q. How many acres?

A. I don't know.

Q. Small tract?

A. I think over 200 acres.

Q. It lay in the middle of the field of the Cumberland [fol. 284a] Coal Company and it all lies a good piece from the river?

A. Lies in the middle of the field of the Cumberland Coal Company yes.

Q. I suppose you regard the coal in the rear about equally valuable to the coal along the river?

A. It brought about as much money or equally as much.

Q. It would not make any difference in the price whether it was 6, 8 or 10 miles back?

A. I don't know whether you can get back 10 miles from the river in Cumberland township.

Q. How far does it extend back about eight miles doesn't it?

A. Yes, probably.

Q. That is the only sale in the past three years you know of?

A. I don't know how long it has been since Joe Moredock sold his coal.

Q. Then Mr. Inghram after all isn't it the price of coal and fair value about what the purchaser would give for it?

A. Well pretty nearly yes.

Q. Now outside the only two companies of any considerable standing who bought coal back from the river or along the river in late years have been the Cumberland Coal Company and the Shannopin Coal Company since 1920 is that right?

A. I don't know much about where the Cumberland Coal Company line runs.

Q. They run in Jefferson township, Cumberland township, Greene township, Whiteley township, Wayne and Perry. You know where the Shannopin bought in Dunkard?

[fol. 285a] A. I have heard of it.

Q. They bought about 14,000 acres. The Cumberland bought elsewhere, have you heard of any other companies buying any considerable quantities of coal?

A. How could they when they had it already bought.

Q. In the neighborhood of their own purchases?

A. Not much because they have it pretty well cleaned up I think.

Q. You say you received $637.00 an acre for your coal?

A. That is about what we figured it.

Q. Do you know what Thompson's trustees sold it to Cumberland Coal Company for?

A. No, how would I know that?

Q. Did you ever talk to Mr. Kyle about that time in which he told you they paid $575.00 an acre for your coal?

A. No sir, I never heard that.

Q. So you got that for your coal from Mr. Thompson some years later and when prices were away up?

A. I don't know anything about that.

Q. The fact is in putting this valuation on it is pretty much of a guess isn't it?

A. When the coal was sold it sold at $700.00 the Long coal.

Q. You would say that fixed the value of the coal for the past three years?

A. When there is no other to be sold.

Q. Is the demand for coal been greater or less during [fol. 286a] the past three years than it was in the preceding three years?

A. I could not tell you about that.

Q. You don't know Mr. Inghram isn't that a fact? You keep in touch with the general conditions. Do you know whether the market for coal has been good or bad in the last three years?

A. Retail coal the works are still running.

Q. Therefore, you assume it is just as good?

A. They are using coal, or it would not be running.

Q. The coal demand is as good as it ever was and dealers in coal lands count it at the same profits as they counted it during the war?

A. We don't know what the dealer gets after you sell it.

E. M. Hartley sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?

A. Cumberland township.

Q. How long have you lived there?

A. All my life.

Q. How old are you?

A. 49 years.

Q. Have you had a knowledge of the development of the coal business in Cumberland township during the last 20 years?

A. Some knowledge yes.

Q. Have you had a knowledge and acquaintance with the development of the actual operating of Pittsburgh coal during that time?

[fol. 287a] A. Some.

Q. Knowledge and acquaintance with the values, purchases and sales of Pittsburgh coal during that time and price generally paid for the same?

A. Some.

Q. Does that knowledge and acquaintance with the coal business and purchases and sales of coal and prices paid for same qualify you to express an opinion as to the fair market value, after due public notice at public sale?

A. I think so.

Q. Mr. Hartley what in your opinion is the fair market value of the Pittsburgh or River Vein of coal in Cumberland township at public sale after due public notice?

A. Along $650.00.

Cross-examination.

By Mr. McClay:

Q. You are one of the gentlemen who own the farm that had the good fortune to sell it to the Cumberland Coal Company?

A. No.

Q. What is your business?

A. Farmer.

Q. Do you have your own farm?

A. I live on my father's farm 1000 acres.

Q. Does he own the coal?

A. No he has sold the coal but I don't know how much. It was when I was a boy. I think possibly $60.00 an acre.

Q. Not more than that?

[fol. 288a] A. No.

Q. In Cumberland township what sales do you know of?

A. Know of the Long sale.

Q. That is the only one?

A. Baily's.

Q. When was it made?

A. 1918 something like that.

Q. Their contract was made in 1916?

A. Yes.

Q. What other sales do you know of within the last three years?

A. I don't know as I know of any only this Long sale.

Q. Has the price of coal lands being going up in the last three years?

A. I don't know as there has been any sold.

Q. What do you know of the price going up by the general demand in the last three years?

A. There does not seem to be any demand for it, you fellows own it all.

Q. No, we do not own all the County of Greene do we?

A. You and the other companies.

Q. I mean Cumberland I don't know anything about these other townships?

A. I have heard of these other townships. I read of the several sales.

Q. How thick is the vein in Cumberland township?

A. Nine foot.

Q. How thick is the vein exactly?

A. I don't know.

Q. Six foot isn't it?

[fol. 289a] A. I don't know.

Q. About 10,000 tons of coal in an acre?

A. Yes.

Q. You value the front coal equally valuable to the rear?

A. Front worth a little more than the rear.

Q. How much more?

A. $300.00 or $400.00 an acre more.

Q. Why would you put such a small price on the rear of the coal?

A. I don't know I suppose the rear is not as good as the front.

Q. In quality?

A. Yes.

Q. Do you know what entered into the purchase price of coal by men that are engaged in the coal business?

A. I don't know whether I do or not. I don't just know sure.

Q. Give us what you think?

A. One thing I suppose because it is good coal, they get it along the river because it would cost so much to get it away.

Q. You don't know what it would cost to put in transportation facilities?

A. That is not my business.

Q. Of course you could not tell how much it would cost to produce a ton of coal in Cumberland township do you?

A. I have heard a number of times, but I could not just tell you today.

Q. Do you know whether that enters into the minds of the purchaser when he is buying coal?

[fol. 290a] A. I imagine it does I don't know.

Q. Also what he would make on it and what he would get for it?

A. Yes.

Adjourned until 9:00 o'clock A. M. Thursday.

Court convened at 9:00 o'clock A. M. Thursday.

JESSE KEENER sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?

A. Greene township.

Q. How long have you lived there?

A. All my life.

Q. During the continual development of the coal business in the eastern end of the county have you been acquainted with that continual development?

A. Yes sir.

Q. Have you had a knowledge of the development of the mines and working of the Pittsburgh or River Vein of coal in that neighborhood?

A. Yes.

Q. Have you had a knowledge during the past fifteen years of the prices and sales of Pittsburgh or River Vein of coal in Greene County?

A. I have.

Q. Does that knowledge and experience of yours qualify you to express an opinion as to the fair market value of [fol. 291a] Pittsburgh or River vein of coal at public sale after due public notice?

A. I think so.

Cross-examination.

By Mr. McClay:

Q. What is your business?

A. Farmer, but carpenter by trade.

Q. In what township?

A. Greene.

Q. Have you ever bought or sold coal?

A. Sold coal yes.

Q. In other words you sold your undivided one-fourth interest in the Keener tract?

A. No, I did not I am not interested in that tract.

Q. What one are you interested in?

A. My father's.

Q. How many acres were in that?

A. Three different pieces about 130 acres approximately.

Q. What was your interest in that?

A. I sold my father's for him and had a piece of my own sold to the Cumberland Coal Company.

Q. How much was in your tract?

A. 1½ acres.

Q. Is that the only transaction in which you sold coal?

A. My father's yes.

Q. Did you ever buy any?

A. No.

Q. All you know about the sale of coal is what you heard?

[fol. 292a] A. Yes.

Q. You never investigated the records?

A. I got the news same as other people.

Q. How did you get it?

A. From people that sold it and newspapers.

Q. Do you know the depth in Greene Township?

A. Something like 300 feet.

Q. Do you know the depth of the vein?

A. 8 or 9 feet.

Q. Sure of that?

A. Use eight foot props.

Q. Isn't the vein only six foot in thickness?

A. It varies in places.

Q. Varies very greatly?

A. Not in all neighborhoods according to the——

Q. Do you know the Poland Coal Company?

A. Yes, I have worked there.

Q. Do you know how much coal according to the acre in Jefferson, Greene and Cumberland?

A. No, I never figured that out.

Q. Do you know the cost of transportation of coal to the river from mines now opened?

A. We don't go that way.

Q. Do you know the cost of transportation by rail from Mather or from the mines in Morgan or Cumberland?

A. No sir.

Q. Do you know the cost of construction of railroads in order to get into the coal?

A. No, sir.

Q. Know nothing about that?

[fol. 293a] A. No, sir.

Q. The only thing you do know is the general talk in the neighborhood and with coal owners as to the prices they have received?

A. Sure from sales.

Q. What coal have you known to have been sold in the past few years in Greene township?

A. Levi Keener, William Keener and John Lantz, in the last three years.

Q. Those are the tracts of coal that have been referred to by witnesses on the stand?

A. Yes.

Q. What tract have you known to have been sold in the past three years in Monongahela township beginning with 1925?

A. No Pittsburgh tract in the last three years in Monongahela.

Q. But there have been of the Sewickley tract?

A. Yes.

Q. Do you know what influences the mind of purchasers of coal in the making of purchases?

A. Speculations; where they don't operate it themselves.

Q. Where they intend to operate it what influence?

A. To make money on it.

Q. Do you know of any purchasers now in the market for coal lands in Cumberland township?

A. No, I think it is all bought now as far as I know.

Q. Do you know any purchasers for coal in Greene township?

[fol. 294a] A. Not exactly.

Q. What do you mean by that?

A. I think the Frick people will take it over when Cumberland Coal Company are willing to let it go.

Q. You think the Frick will take over any property in Greene township when the Cumberland are willing to let it go?

A. Yes.

Q. You think if any of those properties in Cumberland, Greene and Monongahela were sold in front of the Court House here there would be a purchaser for any tract, or any considerable body or the entire tracts?

A. Yes sir.

Q. Are you merely guessing at that?

A. I had information from the Frick surveyors a few years ago.

Q. That they would be willing to buy?

A. Of course that was private they have been at my house several times. I took them in when they were surveying. They gave me information privately that the Frick Coke Company would naturally hold the coal in Cumberland township.

Q. Don't you know that the Frick Coke Company and Cumberland are one and the same company?

A. They are naturally.

Q. The Frick owns all the Cumberland stock except the qualifying shares of the directors. You don't know anything about it do you Mr. Keener who is the Frick Company and who is the Cumberland Coal Company?

[fol. 295a] A. The Frick Company has operating companies operating in Fayette County.

Q. Now isn't it largely a matter of guess as to how much any body of coal would sell for in front of this Court House?

A. We have got to base it on the sales.

Q. A large portion of those sales occurred seven or eight years ago?

A. Some of them, but in taxation we are bound to take the late sales.

Q. Do you know anything about the selling of coal by ton?

A. $3.00 a ton to farmers.

Q. From whom can you buy it at that price?

A. Along the river in Monongahela township.

Q. By the wagon load?

A. You have to haul it away yourself mostly.

Q. You don't know generally what the market price is?

A. Know what mines along the river have for contract prices; they do not go by market.

By Mr. McClay: We renew our objection.

By the Court: Overrule objection, note exception and seal bill for appellants.

By Mr. Waychoff:

Q. What in your opinion is the fair market value of Pittsburgh or River Vein of coal in Greene township, Greene County, Pa., at public sale after due public notice?

A. $525.00 an acre on an average.

[fol. 296a] Q. Do you have any information or knowledge about the quality you testify to as to the comparative price of coal for Dunkard and Greene townships?

A. Yes, sold coal for my father in both townships to the same people at the same time.

Q. Who was the purchaser?

A. Cumberland Coal Company.

Q. What difference did the Cumberland Coal Company make between those purchased in Cumberland and Greene townships?

A. $225.00 on the acre.

Q. At the same time?

A. At the same time and to the same company.

Q. How far apart are the tracts?

A. In Dunkard quarter of a mile from the line and in Greene about a mile from the line.

Q. The two tracts would be more than a mile apart?

Straight line something like a mile East and West and the township line intervening between them and for one they paid $400.00 an acre and for the other $625.00?

A. Yes.

By Mr. McClay:

Q. When was that?

A. Nine years ago.

Appellants object and move the court that the testimony be stricken out because it is too remote.

[fol. 297a] By the Court: Over-rule objection, note exception and seal bill for appellants.

By Mr. McClay:

Q. The river lies East of Dunkard township and Monongahela township?

A. Yes sir.

Q. The piece you refer to in Greene township as having been sold nine years ago lies within a mile of the Eastern line of Greene township?

A. Yes sir.

Q. The piece to which you referred as located in Dunkard township lay almost within a half mile of the western line of Dunkard township?

A. I do not know how far it is in upper Dunkard just above Davistown.

Q. Is it the western part of Dunkard township?

A. I don't know how far above it it does run. It is not in the northwestern part.

Q. Is it near the Perry township line?

A. No sir.

Q. West Virginia line?

A. No sir it is quarter of a mile from the Greene township line, opposite the center of Greene township.

Q. I am talking about Dunkard?

A. That is Dunkard it is south of the center of Greene township.

Q. Don't you know when those options were taken they were taken at all sorts of prices some as low as $150.00 an acre in Dunkard township and some at $200.00.

[fol. 298a] A. We had to take what we could get, Cumberland Coal Company had us surrounded.

Q. What did you get?
A. $400.00 for that in Dunkard.
Q. Wasn't there acres of coal sold for very much less than $400.00 at that time?
A. No sir.
Q. Which tract of coal was near the River, Greene township or Dunkard township?
A. Dunkard was nearer the river than Greene township.
Q. I mean the land and coal?
A. You mean the township not the coal I sold in Dunkard township.
Q. That tracts of coal you sold?
A. Greene township.
Q. How much nearer the river would the Greene township than the Dunkard township tracts?
A. Something like four miles between the two.
Q. The Dunkard tracts were four miles farther removed from the river than Greene township.
A. Yes.

JOHN HENRY sworn:

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Greene township.
Q. How long have you lived there?
[fol. 299a] A. All my life. 60 years.
Q. Have you lived there during the continual development of the coal business in that township and in Monongahela and Cumberland township?
A. Yes, sir.
Q. During the time of that development have you kept yourself informed as to the development in the way of plants and mines for the taking out of the coal along the river?
A. Have seen it sold in the township where I have lived.
Q. Have you kept yourself informed of the various sales in Greene township for the past fifteen years?
A. Yes.

Q. Does that knowledge qualify you to express an opinion as to the fair market value of coal in Greene township at public sale after due public notice?

A. Yes, I think so.

Cross-examination.

By Mr. McClay:

Q. What is your business?

A. Blacksmith by trade.

Q. How long have you been a blacksmith?

A. 25 years.

Q. Where?

A. Garard's Fort, Greene township.

Q. Have you bought or sold coal?

A. No, sir.

[fol. 300a] Q. What special knowledge do you have of bituminous coal in any part of Greene County?

A. Nothing only the sales that is what we have gone by.

Q. Talk in the neighborhood too?

A. Yes, and newspapers.

Q. Have you made it a particular point to find out what coal was sold for, etc?

A. Hearsay.

Q. You know nothing about the thickness of the vein or number of tons that can be taken from the Pittsburgh or River Vein of Coal?

A. Never figured it up.

Q. When they speak of the nine foot vein of coal you know nothing about the real thickness of it?

A. Nothing only what I hear.

Q. Do you know anything about the quality whether it is high in sulphur or in ash?

A. No, I have to get that kind to use in Blacksmithing.

Q. You know nothink about the particular things that would.

By Mr. Waychoff: The appellee objects to the line of questioning on cross-examination by counsel for the appellants for the reason that it seeks to establish the standard which is not the standard established by the decisions of the Courts in Pennsylvania, which standard so established is the fair market value of the property and valued prop-

erly by any witness who has been familiar with the public [fol. 301a] sales and private sales, and all in the township or vicinity of the property in question.

By the Court: Overrule objection for present, note exception and seal bill for appellee.

By Mr. McClay:

Q. Mr. Henry when were these sales made?

A. Last three or four years.

Q. What were they?

A. Lantz in Greene and Whiteley. Keener sale, Long sale and Moredock sale. The Moredock sale was about six years ago I believe.

Q. That was the only one in Greene township of which you have any knowledge.

A. Yes.

Q. Do you know from knowledge the amount that was paid for those tracts?

A. Only what I hear and read.

By Mr. McClay: Object to the competency of the witness.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

By the Court:

Q. Is all that Moredock farm in Greene township?

A. There was a great amount of it in Whiteley.

By Mr. Waychoff:

Q. Mr. Henry what in your opinion is the fair market value of the Pittsburgh or River vein of coal in Greene [fol. 302a] township at public sale after due public notice?

A. From recent sales I believe it is worth about $500.00.

By Mr. McClay:

Q. Do you know what they received for the Long farm in 1927?

A. I heard $400.00.

Q. Your value is higher than $400.00?

A. That is to the extreme west side of the township.

Q. What would you put the coal at on the East side of Greene township?

A. I said $500.00 in the township.

Q. Would you only make $100.00 difference running three miles back from the river?

A. We are within three miles from the river.

Q. It adjoints Monongahela township?

A. Yes.

Q. Would you make any difference between the coal lying on East line of Greene township and coal lying on the West line of Greene township?

A. Very little.

Q. Why wouldn't you?

A. Because it comes along with Cumberland township clear along the side.

Q. What does the coal in Cumberland township have to do with it?

A. We are right along their line on the opposite side.

[fol. 303a] Q. Does the means of transportation have anything to do with it?

A. I suppose it would.

Q. Does the difficulty in getting it out have anything to do with it?

A. I suppose one entry would bring it all.

Q. Does the amount and quality of the coal have anything to do with it?

A. I suppose it has. We have a good quality of coal.

Q. How do you know it is a good quality of coal?

A. Only by hearsay.

Q. Is there a mine opened in Greene township from which coal is removed?

A. Do not know.

Q. You don't know whether there is any there or not?

A. There has been wells drilled down to test it.

Q. Have you examined the record of those wells?

A. No, sir.

A. How do you know what they found?

A. Just hearsay.

Q. Sitting at your Blacksmith shop talking the matter over with your neighbors?

A. Sometimes.

Q. Are you an officer of the township?

A. Yes.

Q. What are you?

A. Tax collector.

Q. Do you get any tax commissions on the amount of tax you collect?

[fol. 304a] A. Sure I do; I would not follow it if I did not.

Q. You get how much?

A. Two per cent, and five per cent discount when paid in and school tax at the face of the book I get two percent.

Q. How long have you been tax collector?

A. Seven years.

Q. Pretty nice job?

A. Some of it is and some is not.

By Mr. Waychoff:

Q. Do you know whether a railroad is projected through Greene township?

A. I have seen them surveying.

Q. Do you know of any purchases of right of way in your neighborhood?

A. Yes.

Q. Mr. McClay has asked you about the John Lantz coal and you have answered that it is located in the western part of Greene township; what else was there connected with that sale that you have not told us as to its location?

A. They have some coal right over the line in Whiteley.

Q. Isn't there about two-thirds of the tract in Whiteley and one-third in Greene?

A. I could not say about that.

[fol. 305a] HARRY MOREDOCK sworn:

Direct examination.

By Mr. Waychoff:

Q. Where do you live?

A. Greene township.

Q. How long have you lived there?

A. 36 years.

Q. What was your father's name?

A. Joseph Moredock.

Q. Was he the owner of the coal that we have heard testified about here that was sold to the Cumberland Coal Company in Greene township?

A. Yes, sir.

Q. Is your father living at the present time?

A. No, sir.

Q. Will you tell us what part of the coal sold at that time was located in Greene and Whiteley?

A. The deed calls for 127 acres in Greene and approximately 233 acres in Whiteley.

Q. Any in Jefferson?

A. No, sir.

Q. 233 acres in Whiteley and 127 acres in Greene township?

A. Yes, sir.

Q. When was it sold?

A. Year 1922.

Q. To whom?

A. J. V. Thompson.

Q. And he sold the same to whom?

A. I think the Cumberland Coal Company.

[fol. 306a] Q. What was the price for that coal received by your father?

A. It netted us a little over $500.00 an acre.

By Mr. McClay: Object to the witness expressing an opinion as too remote and there is no evidence of the present values of coal in 1928, and there is no evidence filed of the general selling price of coal in the community at that time?

By the Court: Objection overruled, exception noted and bill sealed for appellants.

By Mr. Waychoff:

Q. As I understand your father sold 233 acres of coal in Whiteley township and 127 acres in Greene township all in Greene County, blocked, at a price that netted your father upwards of $500.00 an acre?

A. Yes, sir.

Q. Do you know what the price was to the Cumberland Coal Company? What they paid for it?

A. I do not.

Q. It has been testified here Mr. Moredock that there was an option in some way connected with this coal in favor

of Peter S. Grosscup in 1918 or 1919, I ask you if that option was agreed to or signed by your father?

A. It was not.

Q. The option upon which your father's coal was sold was taken from whom?

[fol. 307a] A. I don't know whether there was an option or not. Mr. Thompson came over and talked about it and paid $100.00 down I believe and as quickly as they made the survey and got the sale ready it was sold.

Q. That was not in respect to the Grosscup option or any other?

A. No, I don't think it was ever optioned in late years.

Q. During the development of coal business in Greene and Cumberland have you kept yourself informed as to the mines that have been established up the river and to the taking out of this coal?

A. Nothing but hearsay.

Q. During the past ten years or 15 years have you kept yourself informed as to the purchases and sales of Pittsburgh or River vein of coal in Greene township and the price paid?

A. Yes, I know generally what it was sold for.

Q. From your knowledge of the purchases and sales of coal in Greene township are you qualified to give an opinion of the fair market value of coal in Greene township at public sale after due public notice?

A. Yes.

By Mr. McClay:

Q. Why do you think so?

A. Basing it on the sales.

Q. When?

A. The last few years.

Q. What sales?

[fol. 308a] A. Our own sales.

Q. That was six years ago?

A. Yes, sir.

Q. What other sales?

A. Lantz and Keener sales.

Q. That was 1927 in Greene and Whiteley?

A. Yes, sir.

Q. What other?

A. That is all I know of in the last few years.

Q. Do you know anything about the peculiar circumstances under which that sale was made?

A. No, sir; only they wanted the coal.

Q. What is your business?

A. Farming.

Q. Were you ever engaged in the buying or selling of coal properties generally?

A. Not directly.

Q. Indirectly?

A. Yes.

Q. How and when?

A. When he sold his coal I was directly engaged in the sale.

Q. Do you know what coal would sell for in the rear of Cumberland and Greene at public sale if exposed in front of the Court House after due public notice?

A. I have an idea.

Q. There is not very many purchasers for coal now?

A. No, because there is no coal to be purchased that I know of.

Q. You don't hear of very many people going around [fol. 309a] and asking if there is any loose coal for sale?

A. No, because they know there is no coal to be sold, they know that as well as the farmers.

Q. Does the general conditions throughout the United States have any weight on it?

A. I suppose they do.

Q. Do you know of any recent sales that have been made?

A. The ones in Greene township.

Q. You don't know of any sales in Greene County outside of the particular instances you have mentioned?

A. I am not so well familiar with anywhere else like Greene township.

Q. You don't know anything about the quantity or quality of the coal?

A. No.

Q. You don't know what would appeal to the purchasers who wanted to go into the coal business?

A. Nothing more than the location and quality of the coal.

Q. And the general guess as to what anyone might want to give for it?

A. I suppose.

Q. Do you know what the actual value is? For an acre of surface how do you judge the value of that acre of surface?

A. The sale value would be what someone else would be willing to give for it.

Q. What would enter into the sale value?

[fol. 310a] A. The situation and the quality of the soil and things of that kind.

Q. Would a man give as much for an acre of soil that would only produce 10 bushels of wheat as he would for soil that would produce 20 or 25 bushels?

A. I do not think so.

Q. Is there any comparison between that instance to which I have called your attention as to the coal?

A. Might be I do not know as much about coal as I do surface.

Q. The fact is you don't know anything about coal only what you have heard?

A. Yes, sir.

Q. Have you ever been in a coal mine?

A. No, sir; I have been in a shaft.

By Mr. Waychoff:

Q. Mr. McClay said to you you don't know anything about coal except what you have heard. You have money in the bank, don't you, for the purchase of that coal you know more about it than what you have heard?

A. Yes, in dollars and cents.

By Mr. McClay:

Q. Do you mean it is a guess or opinion?

A. Opinion based upon the sale.

Q. Have you got anyone in your mind that would buy that Lantz coal from us?

A. I do not know the coal people.

Q. You don't know of anyone that would buy it if it were advertised for six successive weeks?

[fol. 311a] A. I don't know the coal men, there may be.

By Mr. McClay: Same objection as to the qualification of the witness.

By the Court: Same ruling, overrule objection, note exception and seal bill for appellants.

By Mr. Waychoff:

Q. Mr. Moredock, in your opinion what is the fair market value of the Pittsburgh or River Vein of coal in Greene township, Greene County, Pa., at public sale after due public notice?

A. I would say $500.00.

By Mr. McClay:

Q. Your land lay along the Whiteley Greene township line?

A. Yes, part of it in Whiteley and partly in Greene?

Q. In 1922 your father received $525.00 per acre?

A. Something over $500.00.

Q. In 1927 the Lantz coal which is similarly situated netted $400.00 an acre?

A. That is what I understand.

Q. That lay along the Wayne township lines?

A. Yes, sir.

Q. Now I show you Exhibit B and ask you if the Monongahela township coal is assessed at $300.00 an acre and no appeal has been taken from it what is the value of Greene County coal three miles back from the river and along the township line?

[fol. 312a] A. I do not know so much about the Monongahela township as I do Greene.

Q. The Monongahela township lies on the river and Greene township is immediately in the rear that is assessed at $300.00 an acre, what then ought to be the assessment in Greene township?

A. I set the valuation in Greene township at $500.00.

Q. If that is assessed at $300.00 and Greene township is three to six miles back of that what would be the fair assessment?

A. About half $250.00.

Q. Base it at about one-half of the front coal was worth?

A. No, the market price.

By Mr. Waychoff: Object to this line of questions because this witness has not qualified to testify to coal in Monongahela township and not qualified himself to testify as an expert as to value of coal in other townships.

By the Court: Sustain objection, note exception and seal bill.

F. M. WADE sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Wayne township.
[fol. 313a] Q. How long have you lived there?
A. 30 years.
Q. In the last fifteen or twenty years have you kept yourself familiar with the continual development of the business of buying and selling coal in your township?
A. Yes, sir.
Q. Have you kept a knowledge and acquaintance with the purchases and sales during that time and prices of coal land sold?
A. Yes, sir.
Q. Do you have any particular reason for having kept a track of purchases and sales and prices?
A. No, sir.
Q. Are you an officer that is especially interested in that?
A. Yes, I am an assessor.
Q. How long?
A. The last four years.
Q. Does your experience and your knowledge of the purchases and sales of coal of the Pittsburgh or River Vein in Wayne township and the prices paid for it, or for the various tracts, qualify you to express an opinion as to the fair market value of the Pittsburgh or River vein of coal in Wayne township at public sale after due public notice?
A. Yes, sir.

Cross-examination.

By Mr. Kyle:

Q. Mr. Wade do you have knowledge of any sales of coal
[fol. 314a] in Wayne township within the last year?
A. No, sir.
Q. Within the last two years?
A. No, sir.
Q. When was the last sale that you knew of?
A. Inside of four years?

Q. To whom was that sale made?
A. Henry A. Phillips.
Q. The last sale you know was the sales made to Henry A. Phillips?
A. Yes.
Q. Which occurred in 1924?
A. Yes.
Q. You have no knowledge of sales later than that?
A. No, sir.

By Mr. Kyle: We object to the witness as not having qualified.

By the Court: Overrule objection, note exception and seal bill for appellants.

By Mr. Waychoff:

Q. Mr. Wade, what in your opinion is the fair market value of the Pittsburgh or River vein of coal in Wayne township, Greene County, Pa., at pubic sale after due public notice?
A. $250.00 an acre.

By Mr. Kyle:

Q. If there was coal under a farm offered for sale in [fol. 315a] front of the Court House, after proper advertising at the present time, what do you think it would bring. Any separate tract offered here of coal for sale after due advertising now what do you think it would bring?
A. $250.00, in my opinion.
Q. Do you know where the Knutti land is across the creek from Brave?
A. No, sir.
Q. Do you know where Brave is?
A. Yes, sir.
Q. If a tract of land adjoined Wayne Township just below Brave were sold within the last year at public sale and only brought $80.00 would that affect your opinion as to what coal would sell for at public sale?
A. No, sir.
Q. Why would it not?
A. Because it is worth it in my opinion.

Q. I am asking you if, as a matter of fact, a piece of coal lying in Dunkard adjoining Wayne township below Brave was sold within the last year at public sale, after being offered three different times without any bidders was finally sold at $80.00 an acre would that not affect your opinion as to what coal would bring in Wayne township at public sale?

A. No, sir.

Q. Why would it not?

A. Because it would not, it would not lay in Wayne township.

Q. If an undivided interest in a block of coal lying in [fol. 316a] the Northern part of Wayne township and extending partly into Center township was sold within the last two years at $80.00 per acre, if you knew that to be true, would that affect your idea of the value of Wayne township coal?

A. No, sir.

Q. Why so?

A. Because I think in my opinion it is worth what I said.

Q. Nothing can change it?

A. That is my opinion.

Q. On what do you base your opinion?

A. The way coal has been sold in Wayne township.

Q. Mr. Wade, if you knew that coal, an interest in a block of coal lying partly in Perry township and partly in Wayne township and been sold and other interests offered for sale within a year at $103.00 per acre would that affect your idea as to the value?

A. No, sir.

Q. Why not?

A. Because.

By the Court:

Q. Mr. Wade you are just giving your idea of what the coal would be worth in a general way without regard to what it has been sold for in the last year?

A. That is my opinion.

Q. Is your opinion based on recent sales?

A. Not in the last year.

[fol. 317a] By Mr. Waychoff:

Q. Mr. Wade what sales is your opinion based upon?

A. The Mary Pethtel farm.
Q. What did it sell for?
A. $280.00.
Q. What other one?
A. Spencer Wade farm?
Q. What did he sell it for?
A. $275.00.
Q. Who else?
A. Ben Fox farm.
Q. What did he sell it for?
A. $285.00.
Q. What other one?
A. Felix Bell farm.
Q. What did it sell for?
A. $285.00.
Q. When was that?
A. 1924 I believe, inside of that time.

By Mr. Kyle:

Q. As a matter of fact it did occur in 1924?
A. It might of about that I said.
Q. You mean inside of the year 1924?
A. Inside the year 1924 it was sold.
Q. It was in the year 1924?
A. No, sir, I did not say that; I said inside of four years, I don't know what year, but I said inside of four years.

By the Court:

Q. That might be in the latter part of 1924?
A. It might be, but it might be in 1925.
Q. You don't know when it was?
[fol. 318a] A. Don't know what year, but it was inside of four years.

A. P. Cosgray sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Wayne township?
Q. How long have you lived there?
A. 67 years.

Q. Have you lived there in the past ten or 15 years?
A. Yes, sir.
Q. Have you lived there while the purchase and sale of the Pittsburgh vein of coal had developed?
A. Yes, sir.
Q. Have you kept yourself informed as to that development and as to the prices and purchases and sales of coal for the past ten or 15 years in Wayne township?
A. Yes, sir.
Q. From that knowledge that you have obtained and known during the past ten years or 15 years are you qualified to express an opinion as to the fair market value of Pittsburgh or River Vein of coal in Wayne township at public sale after due public notice?
A. I think so.

By Mr. Kyle:

Q. Mr. Cosgray you have knowledge of the sales of coal within the last year?
[fol. 319a] A. No, sir.
Q. Any knowledge within two years?
A. I have not.
Q. The last sales you know of are the Henry A. Phillips?
A. Yes, sir.
Q. Knowledge of the last sale to Henry A. Phillips?
A. I don't know that I do.
Q. Do you know the tract called the Ballinger tract?
A. I do not know of that sale.
Q. Do you know the price at which it was sold.
A. No, sir.
Q. You are road supervisor of Wayne township?
A. No, sir; I am not, I was; not now.

By Mr. Kyle: Object to the competency of the witness not being familiar with recent sales in the township.
By the Court: Overrule objection, note exception and seal bill for appellants.

By Mr. Waychoff:

Q. Mr. Cosgray, what in your opinion is the fair market value of the Pittsburgh or River Vein of coal in Wayne Township, Greene County, Pa., at public sale after due public notice?

A. I would think from $225.00 to $250.00; some place around there.

[fol. 320a] Q. I believe you were asked whether you knew about the Ballinger sale and you said you did not?

A. I do not.

Q. You knew the circumstances connected with that sale?

A. Did not.

Q. You did not know of the financial difficulty connected with that sale?

A. I knew nothing of the sale.

Q. Upon what is that value based, your judgment as to that value upon what is it based?

A. Upon the last sales that I know anything of.

Q. Who were they?

A. Spencer Wade, $285.00.

Q. How many acres was there?

A. I don't know whether I could tell that or not but something over 100 acres. And the Felix Bell tract.

Q. How many acres in that?

A. Over 200 acres.

Q. How much an acre?

A. $285.00.

Q. Who else?

A. Benjamin Fox.

Q. How many acres in that?

A. I don't know; I cannot give you the number of acres.

Q. How much did it sell for?

A. $275.00.

Q. Who else?

A. The Pethtel farm?

Q. How many acres in it?

[fol. 321a] A. I am not familiar with the acreage; I suppose 100 acres or better.

Q. How many dollars per acre?

A. $275.00 or $285.00 per acre.

Q. What about the Jesse Rush sale?

A. Yes, but that was before 1922.

Q. What price did it sell for?

A. $250.00.

Q. Do you know how many acres in the Jesse Rush farm?

A. I think close — a 100 acres.

Cross-examination.

By Mr. McClay:

Q. Mr. Cosgray, the sales Mr. Waychoff has mentioned aside from the Jesse Rush sale were sales to Henry A. Phillips, weren't they?

A. I think that was the same.

Q. When was that?

A. In 1924, I think.

Q. You know of no sales since that time?

A. No, sir.

Q. You did not know that Mr. Phillips in 1925 about a year later bought the Bolinger farm for considerable less money?

A. No, I did not.

Q. If you had known that, would that have affected your estimate of the value of coal in Wayne township?

A. I don't think it would.

Q. Do you know where the Knuti land lies across the creek at Brave?

A. I expect I know where it lays but I don't know it by [fol. 322a] that name. I am acquainted with all that country.

Q. Do you know of the Eddy tract just on the West Virginia line in West Virginia, on the Wayne Township line in the very near neighborhood of Brave?

A. I know all that country, but I don't know that.

Q. Do you know part of E. J. Eddy farm?

A. Yes, I know where that is.

Q. If you knew that there had been a public sale of the coal under that farm in two separate pieces within the present year after six weeks of advertising and three adjournments for want of bidders and that it finally sold for $80.00 per acre, would that influence your idea of the value of coal in Wayne township?

A. I think not.

Q. Why wouldn't it?

A. Don't know the conditions of that sale. I know men who go out to buy cattle and sometimes they buy them away down, but that is not the market price. I am telling you what I think the real value of coal in Wayne township is.

Q. Yes, but that is not what you were asked; you were asked what it would sell for at public sale if put up and advertised. What makes you think then that any other piece if advertised now would sell for $225.00 to $250.00 when that piece sold last winter only brought $80.00?

A. There might be reasons why that sold. May be it would not go out of the family's hands, or something like that.

Q. But if it did, would it not affect your idea as to what [fol. 323a] Wayne township coal would bring at public sale?

A. I think it would.

Q. If you knew that the undivided interest in a tract of coal two-thirds in northern part of Wayne township and third in Center township had sold in 1926 for $80.00 per acre would that affect your idea as to the value of Wayne township coal?

A. No, sir.

Q. Why not?

A. That coal was not sold to a regular coal dealer; it was sold for speculation and like any other thing what coal is worth in the market to the buyer that holds it is what I base my value on.

Q. You were asked what it would bring at public sale?

A. That is what I say.

Q. Notwithstanding these sales you still think it would bring $250.00 if put up at public sale?

A. I think it would.

Q. If you knew within a year an interest in a block of coal lying partly in the Western part of Perry township and partly in the eastern or southeastern part of Wayne township had been sold and other interests offered and not sold at $103.00 per acre would that affect your idea as to the value of Wayne township coal. You still believe in spite of all these things it will bring $250.00?

A. Yes.

[fol. 324a] Q. Do you know of anybody that would buy it?

A. No, sir.

Q. What makes you think it would bring $250.00?

A. I am not acquainted with the coal people.

Q. Why do you think it would bring $250.00?

A. Because it has been bringing more than $250.00.

Q. Suppose the coal people don't want to buy it?

A. I am not supposing.

Q. Isn't it true that coal people don't want to buy it now?

A. I don't know.

A. Does these market prices for which it has been sold mean that the coal people don't want to buy it.

Q. You are merely guessing and entirely ignore the recent sales?

A. I base my opinion on those sales I know of and that the coal people have bought.

Q. And that is the only reason you have for that conclusion?

A. Yes.

LEROY GARRISON sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?

A. Wayne township.

Q. How long have you lived there?

[fol. 325a] A. Thirty years.

Q. During the time of the development of what is known as the Pittsburgh or River Vein of coal business, purchase and selling in Wayne Township have you kept yourself informed as to the development of the same?

A. I know of two sales.

Q. Only two?

A. Yes, sir.

Q. You know of two sales; are they recent sales?

A. One in 1919 or 1920 and the other I don't know just when.

Q. Are those the only two sales you know of?

A. All that I can recall now.

Witness excused.

BYRON HEADLEY sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Perry township.
Q. How long have you lived there?
A. Last eight or nine years.
Q. Where did you live?
A. I was born in Perry township and was away various places for a number of years prior to last 8 or 9 years.
Q. You have been in Perry township 8 or 9 years?
A. Yes.
[fol. 326a] Q. Have you kept yourself familiar with purchase and sale of Pittsburgh or River vein of coal in Perry township, prices for which it was sold and sales of coal lands in the past 10 or 15 years?
A. Yes.
Q. From the knowledge you have gained in this way from your general knowledge of purchases and sales in Perry township for the last 8 or nine years are you qualified to express an opinion as to the fair market value in Perry township, Greene County, Pa., at public sale after due public notice?
A. I think so.

Cross-examination.

By Mr. McClay:

Q. Mr. Headley, when were the sales made that you know about?
A. Most of them in 1924.
Q. Have you knowledge of any sales there since the time that you and your family and brothers and sisters and mother sold your coal to Henry A. Phillips?
A. No specific knowledge of any other sale.
Q. Your opinion would be based entirely upon your knowledge of sales accruing in 1924 and prior to that time?
A. Not altogether.
Q. Upon what else would you base your opinion?
A. General conversation with different people who are interested more or less in sales of coal.

[fol. 327a] Q. I understood you to say you had no sales since that time in mind?

A. No, sir.

Q. This conversation did not relate to sales since that time?

A. No, sir.

Q. Then so far as your knowledge of actual value is concerned it would be based upon your knowledge of sales in 1924 or prior to 1924?

A. Not altogether.

Q. What were the conversations about?

A. The values of coal lands.

Q. But not about any sales?

A. No, sir.

By Mr. McClay: Object to the witness as not being qualified to express an opinion.

By Mr. Waychoff:

Q. Mr. Headley, what sales do you know of in Perry township in the past four years?

A. The A. A. Wade coal land?

Q. What did it sell for?

A. $275.00 per acre.

Q. How many acres?

A. Neighborhood of 100 acres.

Q. Who else?

A. The Kinsey Johns heirs?

Q. How many acres of it approximately?

A. Over 100 acres.

Q. Do you know the price for which it sold?

A. Yes.

Q. What other piece do you know of selling there?

[fol. 328a] A. G. F. Headley heirs and Mary A. Connor's Heirs.

Q. Is the G. F. Headley and Connor heirs the same piece?

A. Same parties interested.

Q. About how many acres in those two tracts?

A. About 250 acres.

Q. Do you know the price at which it sold?

A. Yes.

Q. Do you know of the sale of Eli Pethtel coal?

A. Yes, sir.

Q. How many acres in that tract?
A. Approximately 80 acres.
Q. Eli Pethtel is in Wayne and Perry townships?
A. Greater part of it is in Wayne township.
Q. Do you know what it sold for?
A. Yes, sir.
Q. Do you know of other sales?
A. Not in Perry township.
Q. Do you know of sales immediately adjoining Perry or close in the same neighborhood?
A. Yes, sir.
Q. What ones?
A. Benjamin Fox.
Q. How many acres in it?
A. I don't know exactly.
Q. Do you know the price at which he sold it?
A. By hearsay.
Q. What is your business?
A. Farmer.

[fol. 329a] By Mr. McClay:

Q. Mr. Headley the G. F. Headley and Mary Connor Heirs that you referred to are your own immediate family?
A. Yes, sir.
Q. The same heirs of both of them and all sold together in the same transaction to Henry A. Phillips?
A. Yes, sir.
Q. When was that?
A. In 1924.
Q. These other sales all took place in 1924 didn't they?
A. Yes, sir.
Q. You have no knowledge of any sales since that?
A. No specific knowledge.
Q. Any knowledge of sales since that?
A. I have heard it talked here in court the last few days about some sales.
Q. You heard about the sales in Wayne township that was testified to in Court?
A I heard some of that talk.
Q. You have no other knowledge except what you heard in Court except the Henry A. Phillips sales in 1924?

A. No, sir.

Q. You have nothing else upon which to base your opinion?

A. As I said before nothing but general conversation.

[fol. 330a] Q. You did not explain what that general conversation related to Mr. Headley?

A. I think I did.

Q. I believe you said it did not relate to any sales of coal?

A. Yes, sir.

By Mr. McClay: Object to the witness as incompetent.

By the Court: Overrule objection for the present.

By Mr. Waychoff:

Q. What in your opinion Mr. Headley is the fair market value of Pittsburgh or River vein of coal in Perry township at public sale after due public notice?

A. $200.00 an acre.

Ross Patterson sworn.

Direct examination.

By Mr. Waychoff:

Q. Where do you live?

A. Perry township.

Q. How long have you lived there?

A. About 54 years.

Q. Have you kept in touch and informed with reference to the purchase and sale of Pittsburgh or River Vein of coal in Perry township for the past ten or 15 years?

A. Last four or five years.

Q. The price at which it sold?

[fol. 331a] A. Yes, sir.

Q. Do you know of any sales that have been made in Perry township in the last four or five years?

A. In four years, 1924.

Q. What sale do you know of?

A. Headley heirs.

Q. Do you konw at what price the Headley heirs sold for?

A. Yes, sir.

Q. What was the price at which the Headley heirs sold for?

Mr. McClay asks for an offer.

By Mr. Waychoff: We now offer to prove by the witness on the stand, as far as this part of the evidence is concerned to show a sale of the Headley heirs coal in Perry township and the price at which it sold.

By Mr. Clay: Objected to as irrelevant and immaterial.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

Q. That was the Headley Heirs?

A. Yes.

Q. At what price?

A. $295.00.

Q. What other one do you know of?

A. Mrs. Pethtel adjoining that is in Wayne, and partly in Perry.

Q. What price did it sell for?

[fol. 332a] A. $275.00.

Q. Who else?

A. Ben Fox $285.00 in Wayne township.

Q. Who else?

A. That is all I know of.

Q. Do you know of Osborne Wade's sale?

A. If I did I forgot about it.

Q. From your general knowledge of sales and purchases of coal in Perry township for the past four or five or six years and prices paid for same, are you qualified to express an opinion as to the fair market value of Pittsburgh or River Vein of coal at public sale after due public notice?

A. Yes, sir.

Cross-examination.

By Mr. McClay:

Q. You say yes?

A. Yes, sir.

Q. Mr. Patterson have you known of any sales in Perry township since the sales you have mentioned?

A. No, sir.

Q. That all occurred in 1924?

A. Yes, sir.

Q. Have you known of any public sales?

A. No, sir.

Q. Your knowledge of the present value at which coal lands would sell at public sale after due notice is based entirely upon those sales that took place in 1924?

A. Yes, sir.

[fol. 333a] By Mr. McClay: Object to the competency of the witness.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

By Mr. Waychoff:

Q. What in your opinion is the fair market value of the Pittsburgh or River Vein of coal in Perry township at public sale after due public notice?

A. I would say about $285.00.

Q. Mr. Patterson do you know what the general situation of the market for coal lands is at the present time?

A. No, sir.

Q. You are not a coal dealer?

A. No, sir, a farmer.

Q. Never been a coal dealer?

A. No, sir.

Q. You don't know whether there are buyers for coal or not?

A. No, sir.

Q. You have no knowledge of what coal would sell for except that that was sold four years ago in 1924?

A. In 1924, yes.

Q. If that coal was put up at public sale do you know of anyone that would come around and bid on it?

A. No, sir.

[fol. 334a] Q. Why did you say it would sell for $285.00?

A. In 1924 it sold for $295.00 and I supposed it was worth that now. It might bring $285.00 and it might bring $300.00.

Q. Yes and it might bring less?

A. Yes, and it might bring more.

Q. This coal all lies very close to the Wayne township line?

A. Yes, sir.

Q. If you knew of a block of coal that lies in Perry township and extends over into Wayne township has sold within the last year and other interests had been offered within the last year and no buyer found, at $103.00 an acre, would that affect your opinion as to what coal would sell for at public sale in that locality?

A. I don't know what to say about that.

Q. That ought to have some effect on it?

A. It might to a certain extent.

Q. In fact, if you knew it to be a fact Mr. Patterson, that a man widely known as a coal buyer, who had bought coal from time to time in Wayne and Perry townships and other townships in the County, who is a man of means, has been offered and refused to buy an interest in a block of coal lying there in the western part of Perry township and partly in Wayne at $103.00 per acre, notwithstanding he already owns an interest there that would not affect your idea as to what coal will sell for at the present time?

By Mr. Waychoff: Objected to first, because the financial situation of the proposed purchaser who refuses to buy [fol. 335a] does not appear upon the record and his ability to buy and his willingness to buy, and second, because the testimony in this case does not show that he refused to buy an interest in the land, but refused to buy stock in a corporation, and admitted by the secretary that it was in debt and borrowing money to pay taxes at the present time.

By the Court: Overrule objection, note exception and seal bill for appellee.

Q. Would that affect your opinion as to the value of coal?

A. No.

Q. Even if it sold at $103.00 if you put it up for public sale it would bring $275.00?

A. I would not know what it would bring. I am going back on basis of what it sold for in 1924.

Q. Your opinion is entirely a guess?

A. I am going on what it sold for in 1924. I am not guessing.

Q. You don't know what it would sell for now?

A. No, I don't know whether it would sell for $50.00, $100.00 or $300.00.

By Mr. Waychoff: The County of Greene offers in evidence the minutes of County Commissioners of Greene County, Pa., of March 16, 1928, appearing in the Minute Book of 1928, on page 32, which refers to the revision of assessment in certain parts of Greene County, Pa., and pro- [fol. 336a] pose to read the part of said minutes offered into the record.

"March 16, 1928.

COMMONWEALTH OF PENNSYLVANIA,
County of Greene, ss:

We, J. N. Scott, M. P. Headley and Paul Debolt, County Commissioners of Greene County, Pa., do swear that we will faithfully and to the best of our knowledge and belief, revise, correct and equalize the valuation of all property taxable by law in Greene County, Pa., and faithfully perform all the duties of members of the Board for Revision for Greene County, Pa., according to the laws of this Commonwealth.

J. N. Scott, M. P. Headley, Paul Debolt.

Sworn and subscribed to before me this 16th day of March, 1928. Morgan Henderson, Prothonotary."

And now, March 16, 1928, Board met at Commissioner's Office in Waynesburg, Greene County, Pa., for 1928 revision of assessment in Aleppo, Gilmore, New Freeport Boroughs and Springhill Townships, same to be continued from day to day until all appeals are heard.

I read from the minutes of March 27, 1928, that part of the minutes which refer to appeals and equalization of property in Wayne, Center, Washington and Morris town- [fol. 337a] ships, as appearing in the Commissioners' Minute Book for 1928 on page 38.

The Commissioners met at their office in the Court House at Waynesburg, Greene County, Pa., Commissioners J. N. Scott, M. P. Headley and Paul Debolt, being present. Appeals were for Wayne, Center, Washington and Morris townships. Following persons appeared asking for equalization of their property.

The County of Greene offers in evidence the minutes of a meeting of the Board of Revision and Appeals of Greene County, Pa., for the triennial assessment of 1928 held on the

26th day of April, 1928, appearing on Minute Book for County Commissioners for 1928, page 61, and being resolution under which the coal assessment of the various townships of Greene County, Pa., was adjusted and revised with particular reference to the adjustment and revision of in the townships of Cumberland, Jefferson, Perry and Wayne and Carmichaels Borough.

By Mr. Kyle: Objected to because the minutes offered is already in evidence having been offered by the appellant.

By the Court: Overrule objection, note exception and seal bill for appellants.

[fol. 338a] EDWARD MCGREW sworn:

Direct examination.

By Mr. Waychoff:

Q. Where do you live?
A. Dunkard township, Greene County, Pa.
Q. How long have you lived there?
A. Five years.
Q. What is your occupation?
A. Civil and Mining Engineer and coal operator.
Q. What has been your experience as a Coal and Mining Engineer?
A. 38 years' experience as Mining Engineer.
Q. What has been as coal operator?
A. Since 1918.
Q. What knowledge do you have of the mining conditions and openings for the actual mining of coal in the eastern part of Greene County in Cumberland Township, Monongahela and Dunkard townships?
A. I have knowledge of mining conditions in all those townships.
Q. Does that knowledge consist of the actual knowledge of the purchases and sales of coal made in Cumberland, Greene and Wayne townships and the prices thereof in the last few years?
A. Yes, sir.

Q. Will you describe to the Court the general thickness of the Pittsburgh or River Vein of coal in Dunkard, Monongahela, Greene, Cumberland and Wayne townships?

A. The coal is not opened in Greene but on both sides [fol. 339a] of Greene and Dunkard, and the records of drilling in Greene that is supposed to be all about the same thickness, it has a thickness of about seven feet in those townships. Possibly varying from six to nine feet.

Q. Of what quality is the coal?

A. The quality of the coal in Cumberland and part of Dunkard is of such quality as to make metallurgical coke.

Q. What effect does the use of it for this kind of coke have upon the price or value of coal?

A. It makes it more valuable than if it was only good for steam purposes.

Q. How deep is the coal in Greene township under the surface of the ground?

A. It would be about 250 feet under Whiteley Creek and extending to Willow Tree.

Q. Extends back to what depth at the deepest place?

A. Away from the creek I don't know, I suppose it would be three hundred or four hundred feet deeper in places away from the creek.

Q. From your general knowledge of the coal business and the vein of coal and the purchases and sales of coal and your general knowledge of the whole matter are you prepared to express an opinion as to the market value at public sale after due notice of the Pittsburgh or River Vein of coal in Cumberland township, Greene township and Wayne township?

A. Yes, sir.

[fol. 340a] Cross-examination.

By Mr. McClay: Object to his competency as an expert witness for the reason that he has not shown that he is such.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

By Mr. Waychoff:

Q. Mr. McGrew what in your opinion is the market value of the Pittsburgh or River Vein of coal in Cumberland township at public sale after due public notice?

A. About $750.00 an acre.

Q. It has been testified by Engineers for the appellant that the coal in the front of Cumberland township is worth more than coal in the back of Cumberland township, what is your opinion of that?

A. My opinion is that it is more valuable.

Q. To what extent?

A. I would say it is probably 100% more valuable than that in the extreme back part I would say. Possibly worth twice as much in front as that in the extreme rear possibly.

Q. The extreme rear of what township?

A. Cumberland township.

Q. What in your opinion is the fair market value of the front coal in Cumberland township?

A. I would consider the coal in front part worth $1000.00 an acre.

Q. That is the fair market value?

[fol. 341a] A. Yes, sir.

Q. Average value in entire township $750.00?

A. Yes, sir.

Q. What in your opinion is the fair market value of the Pittsburgh or River Vein of coal in Greene township at public sale after due public notice?

A. I would say $600.00 an acre.

Q. Upon what knowledge of existing conditions there do you base that judgment?

A. On the knowledge of sales in that township and in Dunkard.

Q. What sales do you know of that you take into consideration in making up your opinion in Greene township?

A. Sale of Lantz coal and William Keener tract and the Moredock coal and the Oma Creek coal.

Q. Have you investigated those sales so that you know the price at which the coal was sold?

A. Yes.

Q. What was the Lantz sold at?

A. Trifle over $400.00 an acre.

Q. Do you know what township?

A. Greene and Whiteley.

Q. Do you know whether the bulk is in Greene or Whiteley?

A. In Whiteley.

Q. As a mat-er of fact 252 acres in Greene and remainder in Whiteley?

A. Yes, sir.

Q. Did you investigate the price of Joe Moredock sale? [fol. 342a] A. Yes, sir.

Q. What did it sell for an acre?

A. $548.00 an acre.

Q. The price of J. W. Keener tract was sold for?

A. Yes, $650.00 and also Levi Keener sold at $690.00 an acre.

Q. Was that $690.00 or $960.00?

A. $690.00.

Q. What in your opinion is the fair market value of the coal in Wayne Township at public sale after due public notice as resulting from your information?

By Mr. McClay: Objected to because witness has not qualified as to same.

By the Court: Objection overruled, exception noted and bill sealed for appellants.

A. I would say $200.00 an acre in Wayne.

Q. Does the same conditions exist in Wayne as existed in Cumberland township as to the front being more valuable than the rear?

A. Yes, the coal that is available from the rear is more valuable than that that lies in the rear and has no outlet.

Q. I show witness Exhibit B and ask him after examination of that map to tell us who owns the coal in Jefferson township?

A. The Cumberland Coal Company owns 7800 acres in Jefferson township in one block.

Q. Tracing the line as marked on Exhibit B over the [fol. 343a] Cumberland Coal block what would you say as to the Cumberland Coal Company owning most all the coal both front and back in Jefferson township?

A. They did own over half of it according to this map.

Q. Does the same conditions apply as to the extra value of the front coal in Jefferson township as apply in Cumberland township?

A. Yes, on account of the railroad up Ten Mile Creek.

Q. Do you know the topography of Greene township as to which way the waters flow and to what general streams the township drains?

A. Whiteley Creek is the main stream and flows into the Monongahela River at Grays Landing.

Q. Do you know whether or not there is a railroad projected on Whiteley Creek?

A. Yes.

Q. Did you find whether or not the right of way was largely purchased for the construction of that road?

A. Yes, it was.

Q. Are you able to testify from the topography of Wayne township how the water drained in Wayne township generally?

A. Yes.

Q. To what stream?

A. To Dunkard Creek.

Q. The natural methods of taking out the coal in Wayne township would be on what stream?

[fol. 344a] A. On Dunkard Creek and down on the railroad to Scotts Run.

Q. Do you know whether or not there is a broad gauge railroad along Dunkard Creek in Wayne township?

A. Yes, Standard Gauge.

Q. Extends to where?

A. To Brave.

Q. Brave is in the western end of what township?

A. Wayne.

Q. It has been testified or claimed by the appellants in this case that the value of Pittsburgh coal in place has depreciated in the last few years, what is the result of your investigation as to that?

By Mr. Kyle: Objected to unless question is limited to market value.

By the Court: Objection is overruled, exception noted and bill sealed for appellants.

A. The value of the coal in place I think is as great as it ever was, on account of the overproduction in the coal business there is not so much demand for developing new areas of coal as there was during the war, but for the last five years there has been a slump in the market value of coal and that has affected the demand for acreage to be opened at a high price.

Q. During that five years has there been anything happened that stopped the slump temporarily in the sale of mine coal?

[fol. 345a] A. During the last five years it has been affected by actual market value of coal there have been two reasons that caused the value to rise.

Q. What were they?

A. First was anthracite strike, it created a demand for substitute to anthracite and better demand for coking coal and a higher price for coke and raised the price of coal generally. In 1926, that was in 1925, the latter part, of 1926 the strike in England created a foreign demand for coal, which created a general market and raised the general price of coal. After that demand was over the price of coal depreciated again to less than a normal price. The price of coal has been below normal price for the last five years.

Q. You mean price of mine coal filled the market?

A. Price of coal on the cars in the mine.

Q. Are you familiar with the controversy as to lake rates between this coal district and West Virginia districts?

A. Yes.

Q. What will be the effect upon the coal business here of the adoption of the freight rate between interstate commerce commission for the Pittsburgh District operators upon the price of this coal?

By Mr. Kyle: Objected to as asking for an opinion of the witness on what might have happened in case a certain thing happens in the future.

[fol. 346a] By the Court: Admit testimony for the present and overrule objection.

A. The lower freight rates to different points East in the New England States would create a better market for the coal in Western Pennsylvania and Northern West Virginia, because it will give the coal operators in those districts a better chance to compete with coal in Southern West Virginia and Kentucky and a lower freight rate would make the coal lands more valuable. Of course, we have a lower freight rate to the lakes. About twenty cents a ton less rate to the lakes in a comparative way to what they had before.

By Mr. McClay:

Q. What have you been doing in the last five or six years Mr. McGrew?

A. I have been operating coal mines.

Q. Where?

A. Washington County and in Greene County, Dunkard Township.

Q. Have you a mine in Dunkard township, Greene County?

A. Yes, sir.

Q. How many acres have you?

A. About 25 acres of coal.

Q. That is along Dunkard Creek?

A. In the vicinity of Dunkard Creek.

Q. You take it out over the Shannopin private way?

[fol. 347a] A. No, sir.

Q. How do you take it out?

A. Truck it.

Q. You have practically ceased to be a mining Engineer?

A. No, sir, in 1926 I looked after the development of the Shannopin Coal Company's coal development at the mines, made the surveys.

Q. Under whom?

A. Mr. Baton.

Q. He employed you did he?

A. Yes.

Q. You made the physical surveys on the ground?

A. Yes.

Q. Located the shafts and private right of way to the River?

A. No, I did not locate the entries, I made surveys in the mine and lined up the entries by my direction, went in the mine and examined the coal.

Q. According to the specific directions of Mr. George S. Baton?

A. Yes, sir.

Q. Mr. Baton's standard in the profession of mining Engineer is very high?

A. Yes, sir.

Q. Mr. Eavenson does he have a high standard?

By Mr. Waychoff: Objected to as not proper cross examination.

A. I do not know Mr. Eavenson, I know of him. I know he was in Southern West Virginia and know he opened an [fol. 348a] office in Pittsburgh, but I do not know his experience in these fields. I know that he had been in the coke region.

Q. Is his standard very high?

A. I think he has a high standing.

Q. What about John Rayburn?

A. He has a good standing.

Q. You testified the front coal is very much more valuable than the rear coal and you would put a very high price upon the front coal of $1000.00 an acre compared with the front coal in Cumberland township at $260.00 an acre, what would be the fair value of the rear coal three miles back?

A. I did not put any price of $260.00 an acre on it. I am talking about the assessors. The coal three miles back I would think would be worth 70% of the coal along the front.

Q. You testified awhile ago one-half?

A. I said extreme.

Q. It depends entirely upon development, cost of transportation and haulage does it not?

A. The cost of development would be the same in either case. It is simply a case of haulage takes longer. If you have coal that is continuous to your point of development, it is a matter of haulage.

Court adjourned until 1:30 P. M.

Court convened at 1:30 P. M.

Mr. McGrew on the stand.

By Mr. McClay:

Q. You have testified that front coal in Cumberland township in your opinion was fairly worth a $1000.00 an acre [fol. 349a] and the coal three miles back was worth 70% of that, what in your opinion would be the value of the coal five miles back from the river?

A. Three miles back I think would be worth about $1,000.00. The coal from there on back would not be so valuable.

Q. Taking into consideration the cost of transportation what would you think?

A. I would think over $600.00 an acre from there back would be not worth over $600.00 an acre from there back to the end of the township.

Q. How far back is the back end of the township from the river?

A. Something like seven miles.

Q. It would not be so valuable as you extended back as it would be in front by any means?

A. No, sir.

Q. And the consideration that would enter into it would be the cost of transportation and you agree with our engineers that the cost of transportation is five cents per ton per mile?

A. No, I do not agree with that. I think as you extended it back it would be less than that. You could make your haulage for less than that. You could haul the coal for several miles and it would not make any difference in the cost.

Q. How was that hauled?

A. Endless rope.

Q. How far could you operate by using that endless rope?

A. A long distance. I would not say just how far you could operate, double that distance or not.

[fol. 350a] Q. What distance?

A. Twice four miles.

Q. What mines do you now know of that is operated by endless rope?

A. Endless rope is largely gone out of use, but it is a very good way for hauling.

Q. What mines do you now know of that use endless rope in the transportation of their coal?

A. I don't know of any by endless rope now.

Q. Did you ever make an estimate of the cost of transportation of coal under ground as it went back from the river, or the place where it was deposited on the outside?

A. I have seen the costs every month on that from month to month and distributed the haulage.

Q. Where did they do that?

A. With Westmoreland Coal Company.

Q. When?

A. About 1900.

Q. 28 years ago?

A. Yes.

Q. You have never made any estimates or saw any report of costs of transportation in the past five or six years?

A. No, I have not made any estimates in the last five or six years in the cost of transportation.

Q. If Engineers like Mr. Baton and Rayburn would say the cost was five cents per mile would you dispute that?

A. Yes, I would dispute that because it would not increase at the rate of 5¢ per mile for every mile you went back.

Q. How?

[fol. 351a] A. I do not think it would be that because the cost of putting down the tracks would not justify that much.

Q. How much?

A. Not more than a few cents a mile.

Q. On what do you base that opinion?

A. Upon my former experience in the matter.

Q. That dates back 28 years.

A. Yes.

Q. You have no present knowledge either from examining and investigating matters of that sort at the present time, or any investigation which you have made in the past five years?

A. No, I have not made any estimate of that in the past five years.

Q. With regard to Greene township. You are familiar with Monongahela township?

A. Yes.

Q. You know the value of coal in Monongahela township?

A. Yes.

Q. How do you know it?

A. I was Chief Engineer for Poland Coal Company.

Q. How long were you?

A. I laid out their plant and ovens and houses and sidings and it was all built according to my plans, that is, No. 1 and No. 2 mines.

Q. When did you leave the Poland Coal Company?

A. 1913.

Q. That is 15 years ago?

A. Yes, sir.

[fol. 352a] Q. Who is the Chief Engineer now?

A. I don't know.

Q. You have not had anything to do with the Poland Coal Company during all that time?

A. No, sir.

Q. Do you know whether there is any faults in the Poland Coal Company?

A. There is rock in the coal and plenty of that.

Q. That is a very serious matter in the operation of the mine?

A. Yes, sir.

Q. It costs a great deal of money?

A. Yes, sir.

Q. What in your opinion of the fair value of Monongahela coal with your knowledge of the faults that has been developed in the Poland Coal Company's operation?

A. I have knowledge of what Moffitt-Sterling and Maple-Sterling, they have their coal under royalty of 20¢ per ton. They are compelled to mine out coal at 18¢ a ton, that would make it $1800.00 an acre. I have a knowledge that the Penn-Pitt Company is paying 25¢ a ton for coal. I think in both veins.

Q. Weren't they operating exclusively in the Sewickley Vein?

A. They may be.

Q. When did you see the Penn-Pitt last?

A. May be over a year ago.

Q. When you speak about 20¢ a ton or $1800.00 an acre on the basis of 9000 ton to the acre of coal on Monongahela [fol. 353a] township that covers only what they mine and that $1800.00 covers a long period of years?

A. Yes, sir.

Q. There is no interest on that is there?

A. No, sir.

Q. Have you determined the present value of that coal both in the market and basis.

A. I have.

Q. What is it?

A. $1200.00 an acre.

Q. More valuable than Cumberland coal in your opinion?

A. Yes, it is drift coal and it don't require as much investment to open it. The outlay of the plant and so on is not as great. It is also a better quality than Poland Coal Company. It is a good quality of coal. I think it is more valuable than Cumberland township coal on account of it being drift coal.

Q. How does that compare with Dunkard Township front coal?

A. That is on the front coal in Dunkard township.

Q. I was asking you about Monongahela township?

A. I operate some coal myself in Monongahela township.

Q. How many acres?

A. Small tract of a few acres.

Q. How many acres?

A. I think about three acres in it.

Q. What do you know about the value of coal in Greene township?

[fol. 354a] A. I know about these sales of coal and I know about sales of adjoining coal to the Shannopin Coal Company in Dunkard township extending to the Greene township line.

Q. That coal is all very high in sulphur is it not Mr. McGrew?

A. I would not say it was.

Q. What would you say is the high per cent of sulphur?

A. That depends upon what you mean after the coal is cleaned over 1½% would be tolerable high.

Q. Don't you know this runs 3% high in Dunkard township.

A. I don't know that. Mr. Reed told me they were getting very good results from the coal.

Q. Who is Mr. Reed?

A. The general Superintendent.

Q. Did you talk to Mr. Baton about it?

A. No, sir.

Q. It is very high in ash?

A. They develop some faults and when you get up against that you come higher in ash and sulphur, that is the experience of Poland Coal Company. When you get away from that the coal gets better.

Q. You don't know anything about the faults in those coal operations except what you specified?

A. I know about those in the Poland Coal Company showing the faults as you call them and showing the effect of them.

Q. You know that about those in the Shannopin?

[fol. 355a] A. I have not examined those in the Shannopin, but I know about them. I have charge of the diamond drill cores for the Henderson Coal Company.

Q. How does the coal in Greene township compare with coal in Whiteley as to quality and quantity as to thickness in quality?

A. I have not made any actual test in Greene township, but Greene township lies in the Lambert Basin and I am acquainted with coal in that basin. I was Chief Engineer for the coal company when it was opened.

Q. Where was that?

A. Fayette County.

Q. How far away from these properties?

A. I presume five miles from the river, direct line.

Q. It was away from these properties 25 miles wasn't it?

A. No, sir.

Q. How far from Greene township?

A. I have not taken that off the maps exactly. I would say ten miles.

Q. In an air line?

A. Yes, sir.

Q. When were you chief Engineer of the Orient Coal Company?

A. When they got out their plans. I had charge of getting out of the plans and one year in the field after plans were gotten out and had charge of the construction.

Q. When was that?

A. 1903 and 1904.

[fol. 356a] Q. I am asking you about the relative value of coal in Greene and Whiteley?

A. Little greater in Greene than in Whiteley. My opinion would be the coal would turn out to be a little thicker in Greene township.

Q. How much tonnage per acre in Greene township and Cumberland township and Whiteley township? That is Pittsburgh vein of coal?

A. I would say Cumberland township is 10,000 tons to the acre.

Q. What in Greene township?

A. It is not developed in Greene like it is in Cumberland. My opinion is it will be that much.

Q. What in Whiteley township?

A. I don't know. I think it will run about that much in Whiteley, although in the western end it will not be as thick.

Q. What would you say was the comparative value of the coal in Greene township and Whiteley township? Would the Whiteley be more or less valuable than in Greene township?

A. You mean from the sales of coal?

Q. From your opinion as experienced from all the sales you know of how much more valuable, if any, is Greene township coal than Whiteley township coal.

A. Greene township lies a good deal closer to the river and is only three miles from the river and same argument would apply to that other if Greene is operated from the front, the river front, it would be considerably more valuable.

Q. How much more valuable?

[fol. 357a] A. On that kind of a basis possibly be worth 50% more.

Q. What would Greene township be?

A. Possibly be worth twice as much.

Q. The western line of Greene township is how far from the river?

A. I have not ascertained that exactly.

Q. You are familiar with that ground?

A. It is about eight miles to the general western boundary.

Q. Would you call the rear western end of Greene township as valuable as the eastern end?

By the Court: He has gone all over that Mr. McClay.

Q. Where did you say was the line that differentiates the values?

A. There is no absolute line.

Q. How do you distinguish between those values of coal in Greene and Whiteley townships?

A. Back end of Whiteley township is twice as far back as the back end of Greene township I would say.

Q. What would you say about the western line of Perry township?

A. Perry I would think would not be developed from the river.

Q. By railroad? Scott's Run railroad?

A. Might be or it might be developed over the Roberts run. I had conversation with the Chief Engineer and he said possibly they would extend that road up Roberts' run.

Q. You knew the Shannopin Coal Company has it own railroad up Dunkard Creek?

[fol. 358a] A. I do. I did not say up Dunkard Creek.

Q. Where did you say?

A. Roberts Run.

Q. Have you ever seen the Scott's run railroad?

A. Yes, sir.

Q. Do you know the grade on it?

A. I have made an examination upon it.

Q. Do you know the grades?

A. I do not.

Q. Do you know how many cars they haul at one time?

A. I do not. I know the freight rates are the same as on Monongahela railroad.

Q. Do you know who owns it?

A. I know who operates it.

Q. Who does?

A. Monongahela Railroad.

Q. Do you know how many cars they haul at one time?

A. From investigation that is immaterial.

Q. Did you ever see any trains run on that road?

A. Yes.

Q. How many cars?

A. Did not notice that.

Q. The fact is they only have one car?

A. I know the freight rates are the same. There was a difference in the freight rates before the Monongahela acquired it, there was an extra freight rate but that was done away with.

Q. How does your values on Wayne township compare with the values on Gilmore?

[fol. 359a] A. Wayne township has a railroad and Gilmore don't.

Q. Do you know the Eddy farm near Brave station?

A. No, I do not.

Q. If you were told that farm sold for $80.00 an acre would it have any effect upon your judgment or opinion?

A. That would depend upon the circumstances under which it was sold and so on.

Q. What would be the circumstances Mr. McGrew that would affect your mind in the expressing of your opinion?

A. It would depend upon in that vicinity how large a block of coal could be gotten for one thing.

Q. A small block of coal there would not be valuable for operation?

A. Would only be valuable for specific purposes to sell to somebody else.

A. It would not be valuable for operation because the coal is too deep.

Q. What size block would you consider being worthy of consideration for operation?

A. I don't think, the depth that coal is, a Coal Company would want several thousand acres anyhow to go ahead and make an operation, in the expense of sinking shafts and so on.

Q. Would it not affect your opinion that the acreage of two blocks, one 54 acres and one 66 acres?

A. That is if they were sold at a lower price?

Q. No, approximately $80.00 per acre?

A. No. I do not think that would affect my opinion on [fol. 360a] it especially if that was done at a forced sale.

Q. The sales to which you refer as forming the basis of your opinion were what?

A. The sales to Henry A. Phillips.

Q. In what township?

A. I considered the big sales too. I considered the big sales we mentioned here in court. I considered the back coal as not being so valuable as the front coal too. Don't think the Poland coal has depreciated any since it was bought.

Q. Do you know whether the Piedmont Coal Company owns coal in Wayne township?

A. I don't know for sure.

Q. If you were told that it did in very considerable quantities and very anxious to sell it would that affect your opinion?

A. No, sir.

Q. That they had not sold a foot of that coal in five years, though it is well known it is for sale?

A. No.

Q. Do you know the Piedmont Coal Company is not an operating company?

A. Yes, I do. They have coal lands all over the county and from time to time they have market for them at a good price. You cannot get a market every day for these big blocks of coal.

Q. Are you familiar with the coal in Jackson and Center townships?

A. No, sir.

Q. Don't know anything about that?

A. No, sir.

Q. Nor in Franklin township?

[fol. 361a] A. No, I don't know about the coal in Franklin township.

Q. Nor in Morgan or Washington townships?

A. No, sir.

Q. You only know of sales that were made five or six years ago, except a few sales which the testimony revealed yesterday and day before?

A. I think I know of all the sales that were made in the last few years. I looked up the records on these sales, John Lantz, Levi Keener, William Keener and Jesse L. Garard and James B. Moredock. I know of one sale in Jefferson township to Lloyd Pollock and about the sale to Mr. Cree in 1920.

Q. You are familiar with the coal in Jefferson township?

A. Partly, yes.

Q. How does that coal compare with the coal in Cumberland township?

A. I would say it was very favorable with Cumberland township.

Q. It is just as good coal as that in Cumberland township?

A. I think so.

Q. I spoke day before yesterday about a railroad being built up Ten Mile Creek that lies to the extreme Northwestern edge of Jefferson township?

A. Yes, sir.

Q. Do you know anything about the assessments that have been made in Jefferson township?

A. I have not in mind now just what they are in Jefferson. I have known what they were but I have forgotten. [fol. 362a] Q. How far back does Jefferson township run from the southwestern line?

A. To about the back end of Cumberland is my recollection.

Q. Full ten miles?

A. Something like that.

Q. That coal is assessed at $250.00 an acre from the river back to the southwestern line?

A. Yes, sir.

Q. What would you consider the rear end of the township coal to be worth?

A. The rear end is different from Monongahela.

Q. In what particular?

A. It has a railroad through it.

Q. The railroad is being constructed now?

A. It is built.

Q. Jefferson township is three miles wide?

A. I judge something like that.

Q. Would the rear of Jefferson township coal extend to that railroad for transportation?

A. Yes.

Q. That does not make it any less valuable?

A. No.

Q. In other words you can transport coal as cheaply by railroad as by river?

A. Depends upon where you want to take it. You can transport it cheaper by river than by railroad, but if you want to take it to New Castle, Ellwood City, Youngstown, it is cheaper to take it by railroad.

Q. Where is that Sandy Run Railroad Company, didn't [fol. 363a] it cost them $100,000 to put a drill rope across the river to get to the railroad?

A. They are operating Sewickley vein alone.

By Mr. Waychoff: It is admitted by appellant and appellee that the Long or Garard tract of coal in Cumberland township, the Joe Moredock tract and the John Lantz tracts, partly in Greene township, and the Keener tracts in Greene township, about which testimony has been produced repeatedly in this hearing, and the sales of which have been proven, are the property of the Cumberland Coal Company, the appellant, will constitute part of the block of coal

from the assessment of which these appeals have been taken.

It is also admitted by appellant and appellee that the Headley heirs and Os Wade tracts of coal in Perry township, and the Eli Pethtel, Ben Fox, Mary Pethtel, Spencer Wade and Felix Bell tracts in Wayne township, about which testimony has been taken, and the property of Henry A. Phillips will constitute a part of the coal from the assessment of which the appeal of Henry A. Phillips now trying has been taken.

[fol. 364a] HARRY STEPHENS sworn.

Direct examination.

By Mr. Waychoff:

Mr. Kyle asks for an offer.

By Mr. Waychoff: The appellees propose to prove by the witness on the stand that he and his brother John Stephens and James Hatfield, in his lifetime, were the owners at one time of an undivided interest in the Bowen Stephens and Ruth E. Stephens and other tracts of Pittsburgh coal and mining rights immediately adjoining the Pennsylvania line at Blacksville, West Virginia, and immediately adjoining Wayne township, Greene County, Pa., at the same place and that about four years ago he, the witness, and John Stephens, his brother, sold an undivided interest to Henry A. Phillips at $285.00, per acre, and that about two years later, as one of the executors of the estate of James Hatfield, deceased, he sold the undivided interest of James Hatfield, to Henry A. Phillips at $300.00 per acre of the same coal. This for the purpose of showing sale of coal in the immediate neighborhood of the coal assessed and in connection with the fact that the appellants have undertaken to prove sales in West Virginia, adjoining the Pennsylvania line, and for the purpose of showing that from a period over four years ago to a period of two [fol. 365a] years ago the last time price was raised as considered by Henry A. Phillips, one of the appellants.

By Mr. Kyle: Appellants object to the offer for the reason that it is not competent for the appellees to offer in evidence particular sales as evidence of market value.

By Mr. Waychoff: I want to add to my offer the added purpose of rebutting the contention of the appellants that the market price of coal in Wayne township is double the assessment.

By Mr. Kyle: Objected to as incompetent, irrelevant and immaterial.

By the Court: Objection overruled, exception noted and bill sealed for the appellants.

By Mr. Waychoff:

Q. Mr. Stephens where do you live?

A. Waynesburg, Pa.

Q. You describe to the court as near as you can generally the tract of coal and mining rights which you and your brother John and James Hatfield, in his lifetime, owned near Brave?

A. The Ruth E. Stephens tract of I think about 500 acres and Devine tract of possibility 30 some acres, and I owned possibility a little bit more than one-ninth interest in that. The Hoskinson tract just above Blacksville, I think of about 110 acres, that I owned a third interest in that. And [fol. 366a] the Strosnider tract of from six to nine acres I owned a third interest in that and the McFeeter tract of about 132 acres I believe, I owned about one-sixth interest in that and sold my undivided interest about four years ago to Henry A. Phillips at $285.00 an acre.

Q. Did your brother John sell his interest?

A. Yes.

Q. At the same time?

A. Yes.

Q. To the same purchaser?

A. Yes.

Q. What price?

A. $285.00 an acre.

Q. Did James Hatfield have an interest in this land?

A. Yes, he had about the same interest I had except he did not have an interest in the McFeeter tract.

Q. When did he die?

A. I presume about 12 years ago.

Q. Who was the executors of his last will and testament?

A. George Hatfield, Don Rinehart and myself.

Q. What disposition did you make as executors of his interest in this tract of coal?

A. We sold his interest about three years ago to Henry A. Phillips at $300.00 an acre.

Cross-examination.

By Mr. McClay:

Q. Do these tracts you have mentioned, Mr. Stephens, all join the Greene County line?

[fol. 367a] A. No, they do not.

Q. How far are they away from the Greene County line?

A. I don't know in regard to all of them. The Ruth E. Stephens tract runs down and across over a small portion into Pennsylvania.

Q. Above or below Brave?

A. I think just below Brave runs down to the edge of Brave this little piece.

Q. This is the only one that comes to the line?

A. I think so.

Q. Mr. Phillips when he made the purchase from you and your brother John bought the other interests in the same coal? He got practically all the undivided interests in these tracts?

A. He got all we had, yes.

Q. You are the owner of the rest of the interests?

A. Not the Stephens, W. K. Hatfield, and I don't know all them.

Q. Mr. Phillips became the owner of the W. K. Hatfield?

A. I don't know that.

Q. When he bought James Hatfield's interest from the executors he was buying an undivided interest in the same tracts he had previously bought?

A. Yes.

Q. When did he make the agreement?

A. I presume about two years ago.

Q. Can you fix that date a little more definite?

A. I think it was in the fall, possibly either October or [fol. 368a] November, when the payments came due.

Q. The agreement in the fall of the same year he bought it from you and John Stephens?

A. No, I think it was going on over two years.

Q. Have you recently looked up the date of that conveyance?

A. No, I have not.

Q. Do you have a copy of that agreement?
A. I presume we have.
Q. You don't have it with you in Court?
A. No, I have not.
Q. You have a written agreement for the sale with Henry A. Phillips?
A. Yes.

Appellee rests.

R. E. KENT, sworn, called out of order on part of appellant's case.

By Mr. Kyle:

Q. Mr. Kent you are one of the appellants at No. 7 September Term, 1928?
A. I am.
Q. What relation are you to Mary K. Mapel, Harriett McDonald and Ella K. Fordyce?
A. They are sisters of mine.
Q. What relation to W. T. Kent?
A. He is my brother.
Q. Are you familiar with the property covered by this appeal?
A. I am.
[fol. 369a] Q. It appears by the appeal that Mary K. Mapel is assessed with 77¾ acres of coal; will you state whether or not that is full acreage or whether there has been any 6% reduction?
A. That is full acreage without any 6% reduction.
Q. You are assessed with two tracts, one containing 4.27 acres and one 42.8 acres; does those figures represent the full area of those two tracts?
A. Yes, without any reduction whatever.
Q. W. T. Kent, Harriett McDonald and Mary K. Mapel tracts of 77¾ acres, state whether that represents full area of coal owned by them or whether there is a reduction of 6%?
A. Full acreage without any reduction.
Q. Who is the owners of the surface of the one tract of coal formerly owned by your father?
A. My brother, W. T. Kent, owns the surface on the home farm of 224 acres.

Q. How much of that farm is in Wayne township?

A. It is all in Wayne township, but about 11 acres runs over the Mason-Dixon line.

Q. What share of the coal under that farm does W. T. Kent own?

A. One-fifth undivided.

Q. Is he assessed with this surface?

A. He is.

Q. What is the number of acres with which he is assessed with the surface?

A. 199 acres.

Q. That is the Pennsylvania part less the six per cent.?

[fol. 370a] A. Six per cent. of the 11 acres on West Virginia side make up the total.

Cross-examination.

By Mr. Waychoff:

Q. Do I understand Mr. Kent that you had how many acres of surface?

A. 224 acres in the whole farm.

Q. How much in the other?

A. No surface at all in the other, it is all coal.

Q. 224 acres all in Wayne township?

A. No, 11 acres in West Virginia.

Q. Leaves 213 acres in Wayne township?

A. Yes.

Q. Does the two pieces of coal adjoin?

A. No, sir.

Q. They are all assessed in one piece?

A. As far as acreage is concerned.

Q. How many acres in the one you own, the coal?

A. 174.678 acres, Lewis Kuhn heirs.

Q. How did you figure out this 6% business?

A. At the time the Lewis Kuhn heirs was bought it was surveyed and the total survey gave 174.678 acres.

Q. What is the amount of your father's home farm? What did it survey when they conveyed the coal?

A. It has not been surveyed.

Q. Was it surveyed when you conveyed the surface to William?

A. No, sir.

[fol. 371a] Q. What was it?

A. 224.3823 acres.

Q. What have you got to show what coal was in West Virginia?

A. Nothing here except I have at my office a plot that has it calculated at 11 acres.

Q. Does that show exactly 11 acres?

A. I could not testify to that being exactly, that is my recollection.

Q. Do you know what the surface is assessed at?

A. No, I do not.

Q. You did not figure that up?

A. Yes, the acreage is 109 acres, that is what is on the Pennsylvania side, but there is some acreage sold off the original trace of 224 acres.

Q. How much?

A. Between seven and eight acres.

Q. The facts of the case is when you undertake to say the surface has 6% off and the coal has not, you are depending upon your memory without having any definite figures?

A. No, I have definite figures which I gave you a moment ago. 224.3823 acres.

Q. You say some of that has been sold off, but you don't know how much?

A. I cannot give you the exact fraction.

Q. You don't know who that surface is assessed to?

A. I never had any interest in that surface whatever in the Lewis Kuhn heirs surface.

Witness excused.

[fol. 372a] R. E. KENT recalled.

By Mr. Waychoff:

Q. Your sister Mary K. Mapel has how much coal?

A. 77¾ acres.

Q. Harriett McDonald has how much?

A. 77 3/5 acres; W. T. Kent 77 3/5 acres and Mrs. Fordyce 77 3/5 acres.

Q. How much do you have?

A. I sold 30.765 acres out of the Lewis Kuhn tract and that leaves me a total of 47.07 acres.

Appellee rests.

[fol. 373a] EXHIBIT No. 1

From the Assessment Records of Greene County, Pennsylvania, for Cumberland Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Surface, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	No. acres	Value	
Cumberland Coal Co.	Pgh. Pa.	5523	1,435,980	6	210	
			(1,491,210)			
		256	66,560			
			(69,120)			
		3458	899,080	..	...	2,401,830
			(933,660)	..	...	*(2,494,200)*

[Figures in italics have line drawn through.]

[fol. 374a] EXHIBIT No. 2

From the Assessment Records of Greene County, Pennsylvania, for Carmichaels Borough, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Surface, Pgh. or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	No. acres	Value	
Cumberland Coal Co.		38.9	*(11,670)*			
		....	10,114	..	...	*(11,670)*
						10,114

[Figures in italics have line drawn through.]

[fol. 375a] EXHIBIT No. 3

From the Assessment Records of Greene County, Pennsylvania, for Greene Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
Cumberland Coal Co.	Carnegie Bldg., Pgh., Pa.	11642	2,619,450	
		62	13,950	
		252.66	56,848	2,690,248
				(*2,638,400*)

[Figures in italics have line drawn through.]

[fol. 376a] EXHIBIT No. 4

From the Assessment Records of Greene County, Pennsylvania, for Perry Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
Cumberland Coal Co.	Pgh., Pa.	3123.87	(*390,375*)	343,860
			343,530	(*390,750*)
		3.48	(*375*)	
			330	

[Figures in italics have line drawn through.]

[fol. 377a]

Exhibit No. 5

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein: No. acres	Coal, Pittsburgh or river vein: Value	Total adjusted valuation of all property, occupations, etc.
Piedmont Coal Co.	Pgh., Pa.	32⅕	2737	
			(*4025*)	
		3510	298,350	
			(*438,750*)	
		413	35.105	
			(*51,625*)	(*494,400*)
				336,192

[Figures in italics have line drawn through.]

[fol. 378a]

Exhibit No. 7

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein: No. acres	Coal, Pittsburgh or river vein: Value	Total adjusted valuation of all property, occupations, etc.
Phillips, Henry A.	Pgh., Pa	.....	564,655	
		6643	(*830,375*)	
			18,700	583,355
		220	(*27,500*)	(*857,875*)

[Figures in italics have line drawn through.]

[fol. 379a] EXHIBIT No. 7A

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			2737	(*4025*)
Rush, Chas. H.		32⅕	(*4025*)	2737

[Figures in italics have line drawn through.]

[fol. 380a] EXHIBIT No. 7B

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
Smith, Mrs. Roy M	#9 Good Intent, Washington, Pa.		467	467
		5½	(*687*)	(*687*)

[Figures in italics have line drawn through.]

[fol. 381a] EXHIBIT No. 8

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			21,505	
Greene Improvement Co.	Pgh., Pa	253	*(31,625)*	
			3060	*(36,125)*
		36	*(4500)*	24,565

[Figures in italics have line drawn through.]

[fol. 382a] EXHIBIT No. 9

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			22,950	*(33,750)*
Greene County Coal Co.		270	*(33,750)*	22,950

[fol. 383a] EXHIBIT No. 10

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein: No. acres	Coal, Pittsburgh or river vein: Value	Other real estate, description & value	Total adjusted valuation of all property, occupations, etc.
			6596		
Maple, Mary K.	Wbg. 7	77⅗	*(9700)*	House- & Lot 600	10356
					7196

[Figures in italics have line drawn through.]

[fol. 384a] EXHIBIT No. 10A

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein: No. acres	Coal, Pittsburgh or river vein: Value	Total adjusted valuation of all property, occupations, etc.
			(535)	
Kent, R. E.	Wbg, Pa.	4.27	362	
			(631)	
			3638	*(5896)*
[Figures in italics have line drawn through.]		42.8	*(5265)*	4000

[fol. 385a] EXHIBIT No. 10B

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein: No. acres	Coal, Pittsburgh or river vein: Value	Surface, Pgh. or river vein, held separately: No. acres	Surface, Pgh. or river vein, held separately: Value	Total adjusted valuation of all property, occupations, etc.
			6596			
Kent, W. T.	Brave	77⅗	(*9700*)	199	7960	(*18620*) (*18360*) 15256
				Description: 7 House- & lots	Value: 700	

[Figures in italics have line drawn through.]

[fol. 386a] EXHIBIT No. 10C

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable		Coal, Pittsburgh or river vein: No. acres	Coal, Pittsburgh or river vein: Value	Total adjusted valuation of all property, occupations, etc.
			6596	6596
McDonald, Harriet	Brave	77⅗	(*9700*)	(*9750*)

[Figures in italics have line drawn through.]

[fol. 387a] EXHIBIT No. 10D

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
	No. acres	Value	
		6596	6596-correct
Fordyce, Ella K.	77⅗	9662	9662

[fol. 388a] EXHIBIT No. 11

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			11,730	11,730
Seifert, William A.	Pgh., Pa.	138	*(17,250)*	*(11,250)*

[Figures in italics have line drawn through.]

[fol. 389a] EXHIBIT No. 12

From the Assessment Records of Greene County, Pennsylvania, for Wayne Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			22,185	
Kyle, W. J. Trustee	Wbg., Pa.	261	(*32,625*)	(*32,625*)
				22,185

[Figures in italics have line drawn through.]

[fol. 390a] EXHIBIT No. 13

From the Assessment Records of Greene County, Pennsylvania, for Perry Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			62,260	
Phillips, Henry A.	Pgh., Pa.	566	(*70,750*)	62,260

[Figures in italics have line drawn through.]

[fol. 391a] EXHIBIT No. 14

From the Assessment Records of Greene County, Pennsylvania, for Perry Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Address	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
		No. acres	Value	
			352,770	(*400,875*)
Greene County Coal Co.	Pgh., Pa.	3207	(*400,875*)	352,770

[Figures in italics have line drawn through.]

[fol. 392a] EXHIBIT No. 15

From the Assessment Records of Greene County, Pennsylvania, for Greene Township, as Revised and Equalized by the County Commissioners of said County for the Triennial Assessment for the Years 1929, 1930, and 1931

Name of taxable	Coal, Pittsburgh or river vein		Total adjusted valuation of all property, occupations, etc.
	No. acres	Value	
Frick, H. C. Coke Co.	302	67,950	67,950

(Here follows map of Greene County, side folio 392a½)

FOLD-OUT IS TOO LARGE TO BE FILMED

[fol. 393a] EXHIBIT B

Exhibit B is a map of Greene County, a copy of which is attached to appellant's brief, or will be handed to the Court therewith, in accordance with Supreme Court Rule 44.

EXHIBIT D

This deed of trust, made this 29th day of February, 1924, by and between James M. John, Jr., and —— John, his wife, of Monongalia County, West Virginia, grantors of the first part, and Edward G. Donley, of the same county and state, grantee and trustee of the second part. Witnesseth, That the said James M. John, Jr., and —— John, his wife, grantors as aforesaid, do hereby grant and convey, with covenants of general warranty, unto the said Edward G. Donley, grantee and trustee as aforesaid, all the following described real estate situate in Battelle District, Monongalia County, West Virginia, to-wit, all the Pittsburgh or River vein of coal, with the mining rights and privileges appurtenant thereto, within and underlying the following described tracts or parcels of land, to-wit:

First. That certain tract or parcel of land situate on the waters of Pumpkin Run, in said District, County and State, and bounded as follows: Beginning at a stone in Woodruff's line and with it N. 27 degrees West 34¾ poles to a stone; thence with White's line S. 88½ degrees West 72½ [fol. 394a] poles to gum; S. 45 degrees W. 54 poles to pointers; thence with line of Ida Thomas South 29 degrees E. 45 poles to a locust; thence with line of J. Minor Thomas, 83½ degrees E. 48 poles to a stake; N. 60 degrees E. 42 poles to the place of beginning, containing 27 acres, more or less.

Second. That certain other tract or parcel of land situate on the waters of Pumpkin Run, and bounded as follows: Beginning at a stone at the County road with the share of Henderson Thomas, Shriver Thomas, and Elizabeth Snider and with line of Shriver Thomas N. 72 degrees West 23½ poles to a stone; N. 59 degrees W. 14 poles to a stone; N. 79 degrees W. 26 poles to a stone; N. 83½ degrees W.

57 poles to three hickories on ridge; S. 30 degrees W. 34 poles to pointers; S. 6½ degrees E. 23 2/5 poles to a stone; S. 27 degrees E. 9 poles to a white oak; S. 37 degrees E. 4½ poles to a stone; S. 66 degrees E. 20 poles; S. 83½ degrees E. 28 poles to a stone; N. 80 degrees E. 17½ poles to hickory; S. 28 degrees E. 55 poles to a chestnut; S. 30 degrees W. 3 poles to pointers, to corner of James Kinnan, and with it S. 76 degrees E. 37½ poles to pointers; N. 18 degrees W. 8 poles to pointers; thence with line of Henderson Thomas N. 5½ degrees E. 35½ poles to a walnut; N. 10 degrees E. 68 poles to the place of beginning, containing 70½ acres, more or less.

Together with the free and uninterrupted use and enjoyment of the right of way upon and under said land at such points and in such manner as may be considered proper and necessary for the advantageous and economical [fol. 395a] operation of and in the digging, mining and carrying away said coal; and without liability therefor and hereby waiving all damages that might or could arise therefrom by reason of such digging and mining and carrying away all of said coal, together with the privilege of mining, transferring, and removing through said described premises this and other coal now owned or hereafter acquired by said second party, his heirs and assigns, and generally freed, clear and discharged of any servitude to the overlying land or anything therein or thereon, the party of the first part reserving, however, the right to drill through said coal for oil and gas. The party of the second part, his heirs and assigns, shall have the right to purchase at any time as much of the surface of the said land as may be necessary in mining, manufacturing or marketing said coal at the price of $150.00 per acre, which payment shall entitle him to a deed in fee simple to the same.

Third. That certain tract or parcel of land situate in said District, County and State, and bounded as follows: Beginning at a point in the State line at a stone; thence with said line N. 88.40 degrees East 116.45 perches to a stake in the State line; thence by land of Thomas Kinnan, South 2 degrees East 112.10 perches to a post; thence by land of Mark Stiles. N. 84.45 degrees W. 36.74 perches to a stone; thence E. 36 degrees W. 31.15 perches to a stone; thence S. 47 degrees W. 91.80 perches to a post; thence

by land of Nick Cross N. 30 degrees E. 6.54 perches to a chestnut; thence N. 50 degrees W. 23.16 perches to rock oak; thence N. 83.15 degrees W. 22.90 perches to a stake; [fol. 396a] thence by land of William Woodruff N. 13.52 degrees E. 59.57 perches to a locust; thence N. 28.83 degrees E. 54.48 perches to a W. W.; thence N. 49.45 degrees E. 2.90 perches to a B. W; thence N. 6 degrees W. 6.61 perches to a point; thence N. 44.45 degrees W. 2.82 perches to point; thence N. 6 degrees E. 3 perches to point; thence N. 52 degrees E. 3 perches to sugar; thence N. 48.54 perches to beginning, continuing 122.505 acres, according to survey made January, 1901, by G. F. Headley, Surveyor.

Together with all the rights and privileges necessary and useful in the mining and removing of said coal, including the right of mining the same without leaving any support for the overlaying strata and without liability for any injury which may result to the surface from the breakage of said strata, the rights of ventilation and access to the mines and materials; the shafts or openings for such purpose however not to be on twenty acres of the northeast part of said farm. And any surface ground required excepting the twenty acres above for operating or manufacturing of any kind may be taken, but shall be paid for before being occupied, at the rate of $200.00 per acre, which payment shall entitle the party of the second part to a deed in fee for the same; also the right of mining, ventilating, draining and transporting the coal of other lands through the mines and openings in and upon the land of the party of the first part.

That the foregoing conveyance is subject to any right of the owner of the surface to drill and operate through [fol. 397a] said vein of coal for oil and gas, or the underlying coal and minerals.

That the above described coal and mining rights are the same that were conveyed to the said parties of the first part by Lemuel N. John, Sr., and wife, by deed bearing date the 26th day of April, 1923, and now of record in the office of the Clerk of the County Court of Monongalia County, West Virginia, in Deed Book No. 188, at page 404.

In trust to secure the Federal Savings & Trust Company, a banking corporation, of Morgantown, West Virginia, the sum of Five Thousand Dollars ($5,000.00), which said sum is money which the said Trust Company has this day loaned

said grantor, and which said sum is to be repaid to said Trust Company in six months from this date and is evidenced by a promissory negotiable note bearing even date herewith calling for said sum of Five Thousand Dollars and payable six months after the date thereof and executed by the said James M. John, Jr., to said Federal Savings & Trust Company, as payee.

It is covenanted and agreed that this deed of trust shall extend to and secure any and all renewals of said note until the whole of said sum of Five Thousand Dollars, or any part thereof, is fully paid and satisfied.

It is further covenanted and agreed that the said grantor will pay all taxes assessed against the real estate hereinbefore described and conveyed within sixty days from the time when said taxes become due and payable, and upon default of the said grantor in the payment of said taxes, when [fol. 398a] the said Federal Savings & Trust Company shall have the right and it is hereby authorized to pay said taxes, and said taxes when paid by said Trust Company shall constitute a lien upon the real estate hereinbefore conveyed and shall bear interest from date of payment at the rate of six per cent.

Upon failure of the said James M. John, Jr., or some one for him, to pay said sum of Five Thousand Dollars, or any interest thereon when due, and upon notice of such failure to the said Edward G. Donley, trustee, by the said Federal Savings & Trust Company, or by some one for it, it shall be the duty of said trustee, and he is hereby authorized and directed to make sale of the real estate hereinbefore described to the highest and best bidder for cash in hand on day of sale, after having advertised the time, terms and conditions of said sale as required by law, and the said trustee shall receive a commission of five percent on the proceeds of said sale for his services in making said sale.

Witness the following signatures and seals.

James M. John. (Seal.)

STATE OF WEST VIRGINIA,

County of Monongalia, To wit:

I, Leo W. Fleming, a Notary Public in and for said county of Monongalia, do certify that James M. John, Jr., and —— John, his wife, whose names are signed to the writing above, bearing date the 29th day of February, 1924, have

this day acknowledged the same before me in my said county.

[fol. 399a] Given under my hand this 29 day of February, 1924.

Leo W. Fleming, Notary Public in and for Monongalia County, West Virginia. My commission expires Nov. 23, 1931. (Notarial Seal.)

This agreement, made the 28 day of September, A. D. 1918, between Peter S. Grosscup, of the City of Chicago, County of Cook, and State of Illinois, (hereinafter called the "Owner"), party of the first part, and Cumberland Coal Company, a corporation created and existing under the laws of the Commonwealth of Pennsylvania, having its principal place of business in the City of Pittsburgh therein, (hereinafter called the "Purchaser"), party of the second part;

Witnesseth,

That for and in consideration of the sum of One Dollar, to him in hand paid, the receipt of which is hereby acknowledged, as well as the covenants of the Purchaser hereinafter contained, the Owner does hereby agree to grant, bargain, sell and convey, or procure to be granted, bargained, sold and conveyed, to the Purchaser, its successors and assigns, all of the Pittsburgh or River Vein of coal underlying all those certain tracts or pieces of land situate in the Townships of Cumbeland, Dunkard, Greene and Monongahela, [fol. 400a] in the County of Greene, Commonwealth of Pennsylvania, shown in blue and outlined in black on the plan or map hereto attached and made part hereof, including the mining rights, the rights to purchase surface, and all other rights and privileges appurtenant to said coal or acquired in connection therewith, which tracts of coal are designated upon the said plan by the names of the present or former owners, as follows:

The following tracts of coal, rights to mine, etc., situate in the Township of Cumberland, viz.:

Cumberland Township

Number	Name	Acreage
1	D. W. McClure	209.745
2	J. Ewing Baily	233.40√

Number	Name	Acreage
3	Francis A. Hart	249.09√
4	Mary E. Crumrine	1.11√
5	Matilda Hart	6.06√
6	Thaddeus R. Hopton	66.62√
7	Johnson Stewart (2 tracts)	230.31√
8	Stephen D. Stone	1.45√
9	Freeman Kelly	27.18√
10	Alcinda Stewart	.46√
11	Mrs. E. M. Rich	11.40
12	R. M. Rich	1.45
13	R. M. Rich	23.50
14	Frank Wrights Heirs	158.35
	Dunkard Township	
15	Mary Darr	17.90
16	Charles Sheets	123.25
17	David Vance	138.52
[fol. 401a]	Greene Township	
18	Isabella Keenan	38.725
19	W. H. Baily	43.342
20	Hugh Keenan	97.581
21	Isabella Keenan	54.530
22	J. P. Minor	209.201
23	Mrs. Hugh Keenan	299.352
24	I. J. Barclay and Caroline Barclay	158.301
25	John Morrison	54.656
26	F. M. Minor	341.051
27	Ella V. Laidley	221.281
28	Alfred Maple	100.860
29	S. P. Minor	431.020
30	Gerard and Debolt	95.644
31	F. L. Minor	130.475
32	N. H. Biddle	193.875
33	Flora Anderson	102.43
34	Jacob Liver.good	104.25
35	Andrew Lantz	185.49
36	Benson John	83.00
37	Calvin Barber	14.40
38	I. J. Barclay	120.75
39	Elisha Calvert	5.04

Number	Name	Acreage
40	C. C. Conway	27.46
41	L. L. Crawford, et al.	133.51
42	J. C. Gerard	131.26
43	J. C. Gerard	88.40
44	A. Y. Garard	118.96
45	J. L. Garard	124.20
46	Corbly Gregg	180.98
47	Joseph Headley	124.00
48	Charles M. Henry	11.10
[fol. 402a] 49	William Higgins	6.19
50	George W. Lantz	99.12
51	Benjamin Lantz	98.97
52	Andrew Lantz	57.34
53	Mark Lemunion	46.38
54	G. E. Livengood	31.22
55	W. L. Lonhanecker	75.25
56	Sarah E. Martin	2.50
57	R. M. Minor	113.50
58	F. M. Minor	143.93
59	John Morrison	51.50
60	W. H. Murdock	154.06
61	Jane Morrison	2.26
62	P. A. Myers	13.10
63	Elias Ruse	4.48
64	Samuel Robinson	7.03
65	Imri T. Smith (3 tracts)	104.38
66	Simeon Sycks	1.00
67	D. L. Vance	64.11
68	Dr. G. W. Denny	156.23
69	I. L. Messmore (John Morrison)	50.00
70	John Morrison	181.60
71	Caroline Sickelsmith	173.40
72	Earl G. Miller	23.60
73	W. T. Ruse	10.00
74	Reamer M. Minor, et al.	.87
75	Benjamin Williamson	138.20
76	Joseph Vance	84.95
77	Sebastian Keener	74.00
78	Charles Keener's Heirs	251.68
79	James Black Heirs	40.07

[fol. 403a] Monongahela Township

Number	Name	Acreage
80	S. T. Longanecker	159.67
81	H. K. Bart	139.00
82	A. B. Mundell	63.59√
83	Noah M. Hartley	208.65√
84	Mary Hamilton	79.96√
85	E. Thomas	1.50√
86	Leroy Hartley	213.10√
	(Longanecker and Bowlby)	
87	W. G. Mundell	69.60√
88	J. L. Hartley	142.99
	Total	8,863.899
		154.357
		9,018.256

Together with the right to mine and remove all of the said coal without being required to leave support, or provide substitution, for the overlying strata or surface, and without being liable for any injury or damage to the said overlying land, or structures, springs, or any other thing therein or thereon by reason of mining or removing said coal (or coal adjacent thereto where the deeds conveying said coal to the present owners contain such right), together with all surface privileges necessary for the pumping, draining or ventilating the coal herein agreed to be conveyed, or other coal, together with the right to make, maintain and use tracks, roads and ways in and through said mines for the transportation, ventilation and drainage of said coal, and [fol. 404a] every other thing whatsoever, and of coal, materials and supplies from and to other lands, forever.

The Owner agrees to grant and convey, or procure to be granted and conveyed, to the Purchaser, in fee simple, by deeds of general warranty, the above described tracts of coal and mining rights, surface privileges, and other rights and privileges, and the titles thereto shall be good and marketable, and free and clear of all liens, charges and encumbrances of every description, including dower rights. Where Receivers, Trustees in Bankruptcy, Executors, and others acting in a trust capacity are grantors, the said Re-

ceivers, Trustees in Bankruptcy, Executors, and others acting in a trust capacity, shall only be required to deliver deeds in the form ordinarily used in Pennsylvania.

The titles to the said coal, mining rights, and other rights and privileges, the deeds conveying the same, their freedom from liens, charges and encumbrances, and all other matters or things to be done by the Owner under this agreement, shall be satisfactory to and approved by Reed, Smith, Shaw & Beal, Attorneys for the Purchaser, and the deeds for said coal, mining rights, &c., shall be delivered on or before the first day of February, 1919; provided, however, that in the event it is not practicable to consummate the proceedings in bankruptcy authorizing the making of the titles by the Trustees of Josiah Van Kirk Thompson, Bankrupt, the Owner shall have until the day of March 1, 1919, to make delivery, but the Owner covenants that he will use his best endeavors to consummate this contract and make [fol. 405a] delivery of the deeds on or before the day of March 1, 1919.

The entire consideration to be paid by the Purchaser for coal, mining rights, and other rights and privileges above described shall be based on the acreage of the Pittsburgh vein of coal unmined at the time of the delivery of the deed or deeds conveying such coal, mining rights, etc., viz.

Six hundred twenty-five ($625) dollars per acre for each acre underlying what is known as the Hibbs tract, comprising 1828.625 acres.

Six hundred twenty-five ($625) dollars per acre for 888.184 acres underlying what is known as the Cray and Moran tract.

Six hundred seventy-seven ($677) dollars per acre for 355 acres underlying what is known as the Cray and Moran tract.

Six hundred fifty ($650) dollars per acre for 4051.11 acres underlying what is known as the Evans, et al., tract.

Seven hundred ($700) dollars per acre for 1809.60 acres, underlying what is known as the Hartley field; all of which shall be paid by the Purchaser in cash or by check or checks on Pittsburgh or New York banks, or by drafts upon New York banks, at the time of the delivery of the deeds and giving possession.

As there are liens upon many of the properties herein agreed to be conveyed, which the Owner expects to be paid out of the purchase money, it is agreed that the purchaser, its successors or assigns, shall have the right, at its option, [fol. 406a] to pay all of the said liens and deduct the amount thereof from the purchase money.

As a considerable portion of the tracts of coal above agreed to be conveyed is held under options which expire before the date above specified for the delivery of the deeds, the Owner agrees to assign to the Purchaser the said options, and the Purchaser may acquire the titles to the coal covered by the said options, either in its own name or in the name of such person or persons, firm or firms, corporation or corporations as it may designate, and pay to the owner of the coal from whom it takes a deed the amount of money agreed to be paid by the holder of the option to such owner of the coal, but nothing herein contained shall require the Purchaser to accept said option when the option requires a payment in excess of the price fixed under this agreement.

It is agreed that the options so held are as shown upon Exhibit A hereto attached and made part hereof.

The Owner further agrees, at his own expense, to furnish the Purchaser, as promptly as practicable, full and complete abstracts satisfactory to Reed, Smith, Shaw & Beal, showing correctly all of the coal, mining and other rights to be conveyed, which abstracts shall be certified, either by Title Companies or Attorneys satisfactory to said Reed, Smith, Shaw & Beal.

The amount of unmined coal in said tracts shall be ascertained and determined by surveys to be made and verified by an engineer to be selected by the Purchaser, and in the absence of fraud or mistake, his certificate shall [fol. 407a] be conclusive. The reports of said engineer shall be submitted to the Owner from time to time as soon as practicable. The Purchaser shall have the free and unobstructed right to enter into and upon the premises to be conveyed, for the purpose of making surveys, ascertaining lines, and inspecting or examining the premises, at any time after the execution of this contract.

If the titles to any of the tracts of coal and mining rights shall appear to be defective, the Purchaser may refuse to take the tracts to which the titles appear to be defective,

and elect to take the remaining tracts covered by this agreement, and in that event the purchase price shall be determined according to the number of acres of unmined coal conveyed.

The Purchaser may elect to take deeds directly from the present owners of the coal, without having the title pass through the Owner herein named, but the Owner shall execute and deliver to the Purchaser his quitclaim deed for all of his right, title and interest in and to the coal, mining and other rights so conveyed, upon the payment of the balance of the purchase price herein agreed to be paid, if any.

The Purchaser may elect, if it see fit, to take the title of the present owners of the said coal at any time after the making of this agreement, and pay to the owner of the said coal the amount of the purchase price which the Owner has agreed to pay, and in the event that it does so, it will not constitute a breach of this contract.

It is agreed that the Purchaser shall pay all of the expenses incurred by Reed, Smith, Shaw & Beal for and on its behalf, in procuring examinations of the titles, recording [fol. 408a] of deeds, and any other matter or thing whatsoever required to be done under this agreement, and shall pay to Reed, Smith, Shaw & Beal reasonable compensation for all services rendered by them under this agreement, or any matter or thing connected therewith.

It is further agreed that the Owner shall accept the options upon the written direction of the Purchaser, or the Purchaser may accept said options or any of them, in the name of the Owner or the optionee.

The right to drill for oil and gas reserved in any of the deeds vesting title to the coal in any of the owners shall not constitute an encumbrance within the meaning of this contract.

It is agreed that the price which the Purchaser herein has covenanted to pay to the Owner for the coal and mining rights to be conveyed under this contract does not exceed the price fixed in the options to be paid by the Owner.

It is further agreed that the person herein designated as Owner is incorporating a company under the laws of the Commonwealth of Pennsylvania, known as the Piedmont Coal Company, and that upon the incorporation of the said Company and the recording of the Articles of Association

under which it is created, the Owner will assign to said Piedmont Coal Company this contract, and all of his rights thereunder, and upon so doing the said Owner shall be discharged from all personal liability under this contract, and the Piedmont Coal Company shall be substituted as owner, and shall thereafter be regarded as such, and shall be liable [fol. 409a] for all of the covenants herein contained by the Owner to be kept and performed. The Owner has hereto attached and made part hereof a list of the fields of coal, viz: the Hibbs, Evans, Hartley and Cray and Moran fields.

In witness whereof, the parties hereto have set their hands and seals the day and year aforesaid.

Peter S. Grosscup. (Seal.) Witness Samuel McClay. Cumberland Coal Company, by W. H. Clingerman, President. Attest: D. H. Coble. (Corporate Seal.)

Geo. L. Hibb's Tract—No. 1

#1	O. W. McClure Tract	209.745	Acres
#2	Isabella Keenan Tract	38.725	"
#3	W. H. Bailey Tract	43.342	"
#4	Hugh Keenan Tract	97.581	"
#5	Isabella Keenan (Keenan Heirs) Tract	54.530	"
#6	J. P. Minor Tract	209.201	"
#7	Mrs. Hugh Keenan Tract	299.3526	"
#8	I. J. and Caroline Barclay Tract	158.301	"
#9	John Morrison Tract	54.656	"
#10	F. M. Minor Tract	341.051	"
#11	Ella Y. Laidlay Tract	221.281	"
#12	Alfred Maple	100.860	"
		1,828.6256	Acres

[fol. 410a] *(1,828.6256 @ $625—1.142.981.)*
(To be accepted Oct. 3, 1918.)
(First payment of $225,000 to be made Nov. 3, 1918.)
(Balance in four equal annual payments at 5%.)
(Right to anticipate after March 1, 1919.)

[Part set in italics crossed out on copy.]

Cray and Moran Field

S. P. Minor	Tract	431.020	Acres
Garard and Debolt	"	95.6448	"
F. L. Minor	"	130.4750	"
N. H. Biddle	"	193.8750	"
		851.0148	"
Flora Anderson (Separate Options)	"	102.4300	"
Jacob Livingood (Separate Options)	"	104.2500	"
Andrew Lantz (Separate Options)	"	185.4900	"
		1,243.1848	Acres

(Cray's Interest, 355.05 @ $677.00 ..... $240,335.00)
(Other Interests, including Moran's, 888.1848 @ $625.00 ..... $555,115.50)

Total ..... *($795,450.50)*

(Moran's Interest 496.0148 @ $625.00—310,009.25 Cray and Moran to be accepted Oct. 5, 1918 and $10,000.00 to be paid Flora Anderson to be accepted Oct. — 1918 and $5,000.00 to be paid Livingood and Lantz to be accepted Nov. 1, 1918.)

[Part set in italics crossed out on copy.]

[fol. 411a] **Hartley Field—No. 1**

Mary Hamilton,	x	79.96√
C. Longaneckner,		129.14√
C. H. Bowlby,		79.69√
W. G. Mundell,		69.30√
Noah M. Hartley,		208.65√
T. R. Hopton,		27.18√
E. Thompson,		1.50√
Emma Stewart,		1.55√
A. G. Mundell,		63.59√
Thaddeus R. Hopton,		66.62√
F. A. Hart,		249.09√
Joseph Stewart,		110.91√
" "		119.40√
J. Edgar Bailey,		233.02√
Mary Crumrine,		1.09√
Arinda Stewart,		0.56√
Matilda Hart,	x	6.06√

J. V. T.'s Interest - 2/7

J. L. Hartley—J. V. T. All	142.99√
Mrs. Rich	11.40
R. M. Rich	1.45√
" " "	*(23.50)*
(Phineas Reeves)	*(8.10)*
(" ")	*(174.85)*
Frank Wright heir's	158.55√
Total	*(1809.60)*
	1761.50

1761.50

(1809.60) A's at 700 =	*(1,266,720.)*
J. V. T. 556.507 A's =	389,554.90
Others 1,253,093	877,165.10
	1,266,720.00

[fol. 412a] *(It will require $35,000 to accept other 5/7 Interest on or before Oct. 6, at which time part of $25000 has to be made.)*

[Matter in italics has line drawn through.]

Evans Field

Greene Township

Benson Johns	Tract	83.00 acres
Calvin Barber	"	14.40 "
I. J. Barclay	"	120.75 "
Elisha Calvert	"	5.04 "
C. C. Conway	"	27.46 "
L. L. Crawford et al. (Garard & Debolt)	"	133.51 "
J. C. Garard		131.25 "
J. C. Garard		118.96 "
A. T. Garard		88.40 "
J. L. Garard		124.20 "
Corbley Gregg		180.98 "
Joseph Headley		124.00 "
Charles M. Henry		11.10 "
Wm. Huggins		6.19 "
George W. Lantz		99.12 "
Benjamin Lantz		98.97 "
Andrew Lantz		57.34 "

Mark Lemunion	46.38	acres
G. E. Livingood	31.22	"
W. L. Longanecker	75.25	"
Sarah E. Martin *(?)*	2.50	"
R. M. Minor	113.50	"
F. M. Minor	143.93	"
[fol. 413a] John Morrison	51.50	"
W. H. Murdock	154.06	"
Jane Morrison	2.26	"
P. A. Myers	13.10	"
Elias Ruse	4.48	"
Samuel Robinson	7.03	"
Imri T. Smith, 3 tracts, Dunkard Twp. { 30.4, 39.7, 34.28 }		
	104.38	"
Simon Sykes	1.00	"
D. L. Vance	64.11	"
Dr. G. W. Denney, ⅔ of 156.23	104.15	"

Dunkard Twp.

Mary Durr	17.90	"
Charles Sheets	123.25	"
David Vance	138.52	"
Evans, Total	2,623.19	

Included with Evans

¼ John Morrison	181.63	
	50.00	
¼ " "	*(100.00)*	
⅜ S. L. Longanacker	159.67	
⅜ Benj. Williamson	138.20	
¼ H. K. Barb	139.00	
⅜ Caroline Sickelsmith	173.40	
⅓ Joseph Vance	83.60	
Sebastian Keener	74.00	
Charles Keener Hrs.	251.68	
[fol. 414a] James Black Hrs.	40.07	
	(1,341.25)	
	1,291.25	

Earl G. Miller	23.60
Dr. G. W. Denny ⅓	52.08
W. T. Ruse	10.00
	1,426.93
	1,376.93

[Matter in italics has line drawn through. Fractions in first column have line drawn through.]

Agreement made this 31 day of March, A. D., 1919, between Peter S. Grosscup, of the City of Chicago, County of Cook and State of Illinois (hereinafter called the Vendor), party of the first part and Cumberland Coal Company, a corporation, created and existing under the laws of the Commonwealth of Pennsylvania, under Articles of Association, dated April 3, 1918, having its principal office in the City of Pittsburgh, County of Allegheny, in said Commonwealth (hereinafter called Purchaser), party of the second part,

Witnesseth,

That, for and in consideration of the sum of One ($1.00) Dollar to him in hand paid, the receipt of which is hereby acknowledged, as well as of the covenants of the Purchaser [fol. 415a] hereinafter contained, to be kept and performed, the Vendor does hereby covenant and agree to grant, bargain, sell and convey or procure to be granted, bargained, sold and conveyed to the Purchaser, its successors or assigns, on or before September 1, 1919, or as soon prior to that time as the said Purchaser may indicate that it is ready to close said purchase, all of the Pittsburgh or river vein of coal underlying all those certain tracts or pieces of land situate in the Townships of Cumberland, Dunkard, Greene, Monongahela, and Whiteley, in the county of Greene, and Commonwealth of Pennsylvania, shown in blue and outlined in red on the plan or map hereto attached and made part hereof, including the mining rights, the right to purchase surface and all other rights and privileges appurtenant to said coal or acquired in connection therewith, which tracts of coal are designated on said plan by the names of the present or former owners as follows:

[fol. 416a]	Acres	Township
1√ ½ Sarah E. Martin of 82.96 A.....	41.48	Cumberland
2√ Albert E. Longenecker.....	118.20	"
3√ Daniel C. Stephenson—2 Tracts....	195.19	Monongahela
4√ C. A. Mestrezat.....	77.96	"
5√ Noah M. Hartley.....	108.25	"
	541.08	
Less 2/7 already acquired.....	154.60	
	386.48	
6√ Mary and Sarah Hamilton.....	187.50	Cumberland
7√ Ellis B. Hawkins, et al.....	95.82	"
8√ Sarah E. Martin ½.....	41.48	"
9√ Rich Tracts, say.....	52.	"
10√ Phineas Reeves—2 Tracts.....	182.95	"
11√ J. Ewing Bailey.....	259.75	"
	1,205.98	
[fol. 417a]		
12√ M. C. Williamson.....	47.50	Greene
13√ Benj. Williamson.....	140.56	Greene and Monongahela
14√ C. A. Mestrezat.....	184.	Monongahela
15√ Mary J. South.....	66.18	"
16√ Benj. South, say.....	28.	"
17√ " " heirs	168.43	Greene
18√ Matilda South.....	113.	"
19√ Hugh L. Williamson.....	172.51	Greene, Monongahela and Dunkard
20√ Geo. W. Garrison.....	76.57	Monongahela
21 Johnson Stephens.....	58.44	Cumberland
22√ F. W. & R. F. Downey—Balance....	33.51	"
23√ David Zimmer—Balance.....	3.18	"
24√ Isabella Keenan—Balance.....	33.	"
25√ Lydia J. Ammons.....	48.05	"
26√ J. H. Moredock.....	195.87	"
[fol. 418a]		
27√ Wm. H. Baily (Ada Lantz).....	100.43	"
28√ J. E. Blaker.....	45.60	"
29√ J. Patrick Donley (Donley Hrs)....	53.52	"
30√ Martha D. Burdette (⅓) (Donley Hrs)	53.52	"
31√ Catharine Milliken.....	33.83	"
32√ Winfield S. Long.....	80.53	"
33√ Thos. M. Ingram.....	218.93	"
34√ Jonathan Rush.....	69.73	"
35√ John F. Blaker.....	71.31	"
36√ W. E. Cree.....	134.56	"
37√ Milton Long (Part).....	176.71	"
38√ A. L. Rich and Phoebe R. Scott.....	208.79	"
39√ W. G. Dugan.....	156.59	"
40√ J. Milliken.....	108.38	"
41√ Zerelda Reeves, et al.....	99.01	"
42√ Vincent Blaker.....	41.80	"
43√ Hattie R. Blaker	61.78	"
44√ Andrew Lantz.....	201.60	"

[fol. 419a]		Acres		Township
45√	B. F. Donley Heirs (4/6)	214.08		Cumberland
46	Richard Long Heirs—2 Tracts	253.85		"
47√	A. C. Pethtel	104.75		"
48	O. F. Cree	93.91		"
49√	Dennis Smith	283.10		Greene
50√	W. H. Murdock	309.32		"
51√	J. M. Morris	151.88		"
52√	W. A. Reinhart—2 Tracts	183.92		"
53√	D. Blaker	72.14		"
54√	Basil Smith	78.05		"
55√	Vincent L. Fordyce	38.10		"
56√	Frank Henderson	140.79		Greene
57√	Columbus S. Morris	114.80		"
58√	Imri Taylor	81.34		"
59√	Benson Fordyce	70.30		Greene and Dunkard
60√	Geo. W. Headley	134.78		Greene and Dunkard
61√	Amada Rice	108.		Greene and Dunkard
62√	J. L. Blaker	4.50	?	Greene
[fol. 420a]				
63√	Louisa Love	1.45		"
64√	W. E. Blaker	3.	?	
65√	Jasper H. Williamson	200.20		Greene
66√	" " "	41.16		"
67	Clarence I. Lantz	191.05		"
68√	Amada Rice	231.11		"
69√	Hiram Hatfield	218.74		"
70√	Andrew Lantz	967.69		"
71√	James H. Burge	139.40		"
72√	H. C. Fordyce	200.80		"
73√	Rebecca Milliken	3.00		"
74√	W. C. Bailey	238.52		"
75√	Basil Smith	53.50		"
76√	John Lemunion	12.10		"
77√	Jas. Neal	210.43		"
78√	Nicholas Livengood	131.45		"
79√	H. M. Fordyce	146.		"
80√	John F. Lantz	110.73		Whiteley
[fol. 421a]				
81√	Harvey Burge	66.18		"
82	Joseph Moredock	118.88		"
83	" "	108.12		"
84	" "	127.54		Greene
85	J. B. Moredock	210.79		"
86√	B. A. Rinehart Heirs abt.	200.	?	"
87√	Rhoda Herod	120.51		Dunkard
88√	Allen Stephens	62.40		"
89√	Lucretia Roberts	66.12		"
90√	W. S. Roberts	16.85		"
91√	Rhoda Herod	25.73		"
92√	Gredily Vance's Heirs	45.80		"
93√	Amada Rice	75.53		"
94	Church Lot on ? Run	1.25		
	Total	11,272.10	Acres	

[fol. 422a] Together with the right to mine and remove all of the said coal, without being required to leave support or provide substitution therefor for the overlying strata or surface and without being liable for any injury or damage to the said overlying land or anything therein or thereon, by reason of mining or removing said coal (or coal adjacent thereto, where deeds conveying said coal to the present owner contain said right), and together also with all surface privileges necessary for the pumping, drainage or ventilation of coal herein agreed to be conveyed and other adjacent coal, together with the right to make, maintain and use tracks, roads and ways in and through said mines, for the transportation, ventilation and drainage of said coal and hauling supplies to and from other lands forever. The Vendor agrees to convey or procure to be conveyed the above tracts of coal, mining and all other rights above specified, by good and marketable title in fee simple, free and clear of liens, charges and encumbrances of every description, including dower rights. The persons making said deeds shall in all cases give the Coal Company, its successors and assigns their general warranty of the title thereby conveyed, except where such conveyances are made by Receivers, Trustees in Bankruptcy, executors, and others acting in a trust capacity, in which event the said Receivers, Trustees in Bankruptcy, executors and others acting in a trust capacity shall only be required to deliver deeds with the warranties and in forms ordinarily used in Pennsylvania. [fol. 423a] The titles to the said coal mining rights and other rights and privileges, the deeds conveying the same, their freedom from liens, charges and encumbrances, and all other matters or things to be done by the vendor under this Agreement, shall be satisfactory to and approved by Reed, Smith, Shaw & Beal, Attorneys for the Purchaser, and the deeds for said coal and mining rights shall be delivered on or before the first day of September, A. D. 1919, providing, however, that in the event that it is not practicable on or before said date to consummate the proceedings in bankruptcy authorizing the disposition by the Trustee of Josiah Van Kirk Thompson, bankrupt, the Vendor shall have until the first day of November, A. D. 1919, to make delivery, but the Vendor covenants that he will use his best endeavors to consummate this Agreement and make deliveries on or before the first day of September, A. D. 1919.

The entire consideration to be paid by the Purchaser for the coal and mining rights and other rights and privileges above described shall be Six Hundred ($600.00) Dollars for each acre of the Pittsburgh or river vein of coal unmined at the time of the delivery of said deed or deeds, conveying said coal, mining rights, and other rights and privileges which shall be paid by the Purchaser in cash or by certified check or checks upon a Pittsburgh bank or drafts upon New York banks, at the time of the delivery of the deeds and of the giving of possession. As there are liens upon the properties herein agreed to be purchased, which the Vendor expects to pay out of the purchase money, it is [fol. 424a] agreed that the Purchaser, its successors and assigns, shall have the right, at its option, to pay the amount of said liens and deduct the amount thereof from the purchase money. As many of the tracts of coal above agreed to be conveyed are held under options which expire before the date above specified for the delivery of the deeds, the Vendor agrees that he shall assign to the Purchaser the options and the Purchaser may acquire the titles to the coal covered by the said options, either in its own name or in the name of such person or persons, firm or firms, corporation or corporations, as it may designate, and pay to the owner of the coal from whom he takes a deed, the amount of money agreed to be paid to him under said option, and specified therein, but nothing herein contained shall require the Purchaser to pay the full amount of Six Hundred ($600.00) Dollars per acre, where the option provides for a less price, until the consummation of this Agreement, and where the amount fixed in the option exceeds Six Hundred ($600.00) Dollars per acre, the Purchaser shall have the right to pay the amount specified in the option and deduct the difference between the amount so paid to the owner of the coal and Six Hundred ($600.00) Dollars per acre from the purchase price herein agreed to be paid for all of the said tracts of coal as an entirety, upon the consummation of this Agreement.

The Vendor further agrees at his own expense to furnish the Purchaser, as promptly as practicable, full and complete abstracts satisfactory to Reed, Smith, Shaw & Beal, showing correctly all of the coal, mining and other [fol. 425a] rights to be conveyed, which abstracts shall

be certified either by title companies or attorneys satisfactory to said Reed, Smith, Shaw & Beal.

The amount of unmined coal in said tracts shall be ascertained and determined by certificates to be made and verified by an engineer to be selected by the Purchaser, and in the absence of fraud or mistake, his certificate shall be conclusive. The reports of the said engineer shall be submitted to the Vendor from time to time as soon as practicable. The Purchaser shall have the free and unobstructed right to enter into and upon the premises to be conveyed, for the purpose of making surveys, ascertaining lines and inspecting and examining the premises, at any time after the execution of this Agreement.

If the titles to parts of the premises shall appear to be defective, the Purchaser may reject the same and elect to take the remainder, and in that event the purchase price shall be determined according to the number of acres of unmined coal in said remainder.

Purchaser may elect to take deed directly from the present owners of the coal, without having the title pass through the Vendor herein named, in which event the Vendor shall execute and deliver to the Purchaser his quit-claim deed for all of his right, title and interest in and to the coal mining and other rights so conveyed, upon the payment of the balance of the purchase price herein agreed to be paid, if any.

Purchaser may elect to take the title of the present owners of the said coal at any time after the making of this [fol. 426a] Agreement and pay to each of said owners of said coal the amount of the purchase price which the owner has agreed to take, and in the event that it does so, such action shall not constitute a breach of this contract, but the Purchaser shall deduct from the purchase price of Six Hundred ($600.00) Dollars per acre the amount paid to the owner of the coal. There shall be deducted from the purchase price a sum equal to Six Hundred ($600.00) Dollars per acre for a strip thirty-three feet wide for each and every trunk natural gas line throughout its entire length, and sixteen one-hundredths of an acre around each natural gas and oil well drilled on said premises, whether producing or abandoned.

It is agreed that the fees of Reed, Smith, Shaw & Beal for all services in connection with any matter or thing under

this contract, including the examination of abstracts, employment and payment of such title companies or attorneys as they may deem necessary in the examination of titles and the verification of the abstracts and the preparation of deeds shall be Five ($5.00) Dollars per acre for each and every acre of coal conveyed under this contract or hereinafter added thereto or conveyed by a supplemental agreement. Each party hereto shall pay one-half of the said fees, but the one-half to be paid by the Vendor shall be deducted from the purchase price to be paid to him.

The Vendor shall procure options in writing from the various owners of the properties covered by this contract, and if required shall assign the same to the Purchaser, in writing. The Vendor may assign to the Piedmont Coal [fol. 427a] Company, this contract and be discharged from all liability thereunder, provided the Piedmont Coal Company shall assume all of the covenants herein contained.

The right to drill for oil and gas reserved in the deeds vesting title to the coal in any of the present owners thereof shall not constitute an incumbrance within the meaning of this contract.

This Agreement shall inure to the benefit of and be binding upon the respective parties, their heirs, executors, administrators, successors and assigns.

In witness whereof the Vendor has hereunto set his hand and seal and the Coal Company has caused this agreement to be signed by its President and its corporate seal to be hereunto affixed and attested by its Secretary the day and year first above written.

Peter S. Grosscup. (Seal.) H. J. Wallace. Cumberland Coal Company, by W. H. Clingerman, President. (Seal.) Attest: D. H. Coble, Secretary. (Corporate Seal.)

[fol. 428a] Stenographer's Certificate

I hereby certify that the proceedings, evidence, etc., are contained fully and accurately in the notes taken by me on the trial of the above cause and that this copy is a correct transcript of the same.

Anna K. Tilton, Stenographer.

Certificate of the Court

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

A. H. Sayers, Judge.

[fol. 429a] In Court of Common Pleas of Greene County

Findings of Fact, Conclusions of Law, and Decree—Filed January 13, 1930.

The Cumberland Coal Company, a corporation of Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed its appeal at the above number and term, covering coal lands in Cumberland Township, alleging as reasons for the appeal, that:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed "active coal") at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assess-[fol. 430a] ment of other coal and other classes of real estate in the County of Greene.

The final or adjusted valuation for assessment purposes in this case was at the rate of $260.00 per acre for 9237 acres

valued at $2,401,620.00, a reduction of Ten Dollars per acre on the valuation returned by the township assessor.

At the time this appeal was taken, Cumberland Coal Company also took a similar appeal at No. 222 June Term, 1928, from the assessment of 38.9 acres of Pittsburgh coal in Carmichaels Borough, valued at $10,114.00; at No. 223 June Term, 1928 from the assessment of 11,956.66 acres of Pittsburgh coal in Greene Township at a valuation of $2,690,-248.00; at No. 224 June Term, 1928, from the assessment of 3126 acres of Pittsburgh coal in Perry Township, at a valuation of $343,860.00; and at No. 225 June Term, 1928, from the assessment of 6012 acres of Pittsburgh coal in Wayne Township, at a valuation of $510,980.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Greene County Coal Company at No. 227 June Term, 1928, from the assessment of 3207 acres of Pittsburgh coal in Perry Township, at a valuation of $352,-770.00; Henry A. Phillips at No. 228 June Term, 1928, from the assessment of 566 acres of Pittsburgh coal in Perry Township, at a valuation of $62,260.00; Piedmont Coal Company at No. 229 June Term, 1928, from the assessment of 3955.5 acres of Pittsburgh coal in Wayne Township, at a [fol. 431a] valuation of $336,192.00; Henry A. Phillips at No. 230 June Term, 1928, from the assessment of 6900.7 acres of Pittsburgh coal in Wayne Township at a valuation of $586,559.00; Greene County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,950.00; Greene Improvement Company at No. 232 June Term, 1928, from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24,565.00; Mary K. Mapel et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1928, from the assessment of 138 acres of Pittsburgh coal in Wayne Township, at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,185.00.

At the trial of the appeals, on motion of counsel for the appellants and over objection of the appellees, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; and further that the Court apply all of the evidence taken in the appeals so joined whenever the same may be relevant and material and make separate decrees in each case in accordance therewith." (Transcript 1, page 10.)
[fol. 432a] A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals above listed. From the evidence in this case, the Court finds the following facts:

1. Cumberland Coal Company is a corporation of Pennsylvania, having its principal office in the City of Pittsburgh, Pennsylvania.

2. Cumberland Coal Company owns in fee 9237 acres of Pittsburgh or River vein of coal in Cumberland Township, Greene County, Pennsylvania, which was assessed by the Assessors in that township for the triennial assessment of 1928, at $270.00 per acre, aggregating $2,494,830.00, and reduced by the Commissioners, sitting as a Board of Revision and Equalization, to $260.00 per acre, aggregating $2,401,620.00, including six acres of surface valued at $210.00.

3. The Pittsburgh or River vein of coal owned by Cumberland Coal Company within the limits of Greene County, is one contiguous block of coal, with the exception of a few smaller tracts, containing in all 64,754 acres, and lies partly in Jefferson Township, Jefferson Borough, Cumberland Township, Greene Township, Whiteley Township, Franklin Township, Wayne Township, Perry Township, Monongahela Township, Dunkard Township, and Carmichaels Borough, Greene County, Pennsylvania. One small detached tract of 132 acres adjoining Rices Landing Borough, and 203 acres lying in Monongahela and Cumberland Townships, Greene County, and possibly other small tracts are detached from the main body of coal.

[fol. 433a] 4. The Cumberland Coal Company is a subsidiary or affiliated corporation with the H. C. Frick Coke Company and the United States Steel Company, and is what is termed a holding company, it not being engaged at this time in mining or operating the coal land owned by it; but its coal land adjoins the coal land of the H. C. Frick Coke Company, which has been until recently operating the said vein of coal in Rices Landing Borough and Jefferson Township, to the north and east of the main body of the coal of the Cumberland Coal Company.

5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.

6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemacolin and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Com-[fol. 434a] pany, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.

7. The Pittsburgh or River vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, as disclosed by actual drilling tests, and is for the purposes of this appeal practically of the same character, quality and thickness, being from seven to nine feet thick, as it varies in different localities, and is valuable as a metallurgical or coking coal, as well as for steam and fuel purposes.

8. Major operations in this coal are conducted at Mather, in Morgan Township, by the Mathers Collieries Company; at Crucible by the Crucible Fuel Company; at Nemacolin

by the Buckeye Coal Company; and in Dunkard Township by the Shannopin Coal Company at Bobtown. The whole Greene County front along the Monongahela River, above Cumberland Township, is taken up by smaller mines operating in the Pittsburgh vein, and in the Mapeltown or Sewickley vein of coal. The Sewickley vein of coal is operated and is assessed for taxation in Monongahela Township and possibly in Greene and Dunkard Townships.

9. Five appeals of the Cumberland Coal Company relate to lands in Carmichaels Borough, Cumberland Township, Greene Township, Perry Township and Wayne Township, which are parts of the contiguous block of 64754 acres above described.

10. The Pittsburgh or River vein of coal owned by Cumberland Coal Company, and lying within the limits of Cumberland Township, Greene County, Pennsylvania, consists [fol. 435a] of one contiguous block with the exception of two detached pieces above described, and surrounds on three sides a block of coal owned by the Buckeye Coal Company containing by estimation about 1200 acres, as shown in yellow upon the map, Exhibit B, of unopened virgin coal. This block extends from a point distant 2¼ miles westerly from the Monongahela River and runs back along the western line of Cumberland Township and the southern line of Jefferson Township a distance of about nine miles from the river. It does not touch the river at any place, and can only be reached, except through coal of the appellant in other townships, from the surface, by shafts sunk to a depth of four hundred feet or more, and can be transported only by the construction of new railroads (either underground or on the surface) to the river or to other railroads at an expenditure of very large sums of money, except through other coal of appellant extending and opened through to the Cumberland Township block from the railroad and river.

11. The Commissioners sitting as a Board of Revision and Equalization have reduced the assessment returned at $270.00 per acre, and valued and assessed the Pittsburgh or River Vein of coal within the entire territorial limits of Cumberland Township, Greene County, Pennsylvania, at two hundred sixty dollars an acre, except where the coal is

opened and mined, and where such condition exists, they have assessed one hundred acres as active coal, and if the amount of coal mined exceeds seventy-five acres for the year 1927 they have increased the acreage of the active coal to two hundred fifty acres, which they have assessed [fol. 436a] at five hundred dollars an acre having considered the actual value as determined by selling price, access to the river and other means of transportation, and the probable time when the coal will be mined and removed, and the cost of operation and transportation.

12. Practically all the coal of the Pittsburgh vein in Cumberland Township, with the exception of 9237 acres of coal which belongs to the Cumberland Coal Company, belongs to the Crucible Fuel Company and the Buckeye Coal Company, who are operating the said vein of coal through openings in Cumberland Township.

13. That part of the Cumberland Coal Company tract of 64,754 acres lying in Cumberland Township, with the exception of two small tracts above described, near the Monongahela River, begins at a point approximately 2¼ miles from the Monongahela River and extends to the rear of Cumberland Township on the west, a distance of about 8½ miles. In the middle of the 9237 acres belonging to the Cumberland Coal Company is a block of virgin coal belonging to the Buckeye Coal Company, apparently containing upwards of 1200 acres, and another peninsula of large size enclosed on three sides by the Cumberland Coal Company.

14. The coal along the Monongahela River on the east of Cumberland Township and for a distance west from the river of approximately three miles, because of its accessibility to market both by river and rail, and because of the fact that it was being actively operated, is worth twice as much as the balance of the coal in said township from the three mile line to the rear of the township, and nearly all [fol. 437a] of the coal belonging to the Cumberland Coal Company in Cumberland Township is in that part of the township beginning at a line approximately parallel to the Monongahela River, two and one quarter miles west of the river, and extending west in the township to its boundary, a distance of approximately six miles.

15. Within the second zone or the back half of Cumberland Township is included by estimate, about 3000 acres belonging to the Buckeye Coal Company, more than 1200 of which are in the middle of the block of the Cumberland Coal Company in said township.

16. The block of coal of the Cumberland Coal Company in Cumberland Township does not extend in that township to the Monongahela River or the railroad along the Monongahela River. It is connected by other coal lands of the Cumberland Coal Company, and of the H. C. Frick Coke Company, an affiliated company, with both the railroad and the river through Rices Landing Borough and Jefferson Township. It is also connected with the river through its own coal lands in Monongahela Township and the coal lands of the H. C. Frick Coke Company in Monongahela Township which has a frontage on the Monongahela River.

17. The assessor of Cumberland Township assessed all the coal of the Pittsburgh or River vein within said township except what is termed "active coal" at the sum of $270.00 per acre and the County Commissioners, acting as a Board of Revision and Equalization, after hearing all parties interested, reduced the assessment throughout the township on said vein of coal, exclusive of "active coal", [fol. 438a] to the rate of $260.00 per acre, reducing the total value (including 6 acres of surface valued at $210.00) from $2,494,200.00 to the total adjusted valuation of $2,401,620.00.

18. The assessors in Cumberland Township and throughout the County of Greene did not assess land of any character, farm lands, dwelling houses, business property or coal at its actual selling value or actual market value or at the actual price or sum which the lands would bring at public sale after full public notice, but they did attempt to assess all lands at a ratio of fifty per cent of its actual value, limited and defined by market value, throughout the county and in the township of Cumberland.

19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail

or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.

20. No minute of their adoption of the fifty per cent ratio was made, but it was actually used by the Board of Revision in making the assessment in this case.

[fol. 439a] 21. Most or nearly all of the Pittsburgh coal in Cumberland Township is held by the Cumberland Coal Company, the Crucible Fuel Company and the Buckeye Coal Company, the last two of which are operating companies.

22. The assessment rolls for Cumberland Township show the Crucible Fuel Company assessed with 250 acres of active coal at $500.00 per acre, 3802 acres valued at $260.00 per acre, or $988,520.00; and other real estate including stores, theater and houses, at $164,435.00, making a total valuation of $1,277,955.00.

23. The Buckeye Coal Company is assessed with 250 acres at $500.00 per acre, or $125,000.00; and 6737.89 acres at $260.00 per acre, amounting to $1,751,680.00, and other real estate, farm houses, theater, store, etc., at $377,891.00, aggregating $2,254,571.00.

24. There has been a depreciation in the value of Pittsburgh coal in the past six years throughout Greene County, due in part to the discrimination in freight rates in favor of the West Virginia and Southern Districts against coal in this district, but the coal in Greene County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, and is being operated by steel companies for their own use or held in reserve by the Cumberland Coal Company, the H. C. Frick Coke Company, and other holding companies, for future needs in connection with the business of the production and manufacturing of iron and steel.

[fol. 440a] 25. The coal in the western half of Greene County is held in proportion of about two-thirds by spec-

ulators or holding companies, and possibly one-third of it is still in the hands of the farmer or original owner.

26. It is practically admitted that the coal throughout Greene County is assessed at a price very much below its actual value or intrinsic worth, but also admitted that its market value has been depreciated along with the market value of farm lands, business buildings, private residences, and other real estate, and it is true that the depreciation in coal has been no greater proportionately than the depreciation in the value of any other real estate.

27. The territorial limits of the township for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.

28. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity [fol. 441a] to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.

29. Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River. Some slight differences and increase in price within the zones outlined are due to advantages in the way of transportation or nearness to transportation by river or rail already available.

30. The Pittsburgh or River vein of coal of appellant lying a distance of three miles west of the Monongahela River and extending back a distance of three miles, or six miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly.

31. The Commissioners in revising and equalizing the assessments placed upon the Pittsburgh or River vein of coal allowed a deduction of six per centum from the acreage where the owner owned the surface alone, or both the surface and the Pittsburgh or River vein of coal but they did not allow a similar deduction in acreage to the appel- [fol. 442a] lant but assessed it with the full acreage as shown by the deeds and surveys.

32. The Commissioners, sitting as a Board of Revision and Equalization, have assessed the Pittsburgh or River Vein of coal in Monongahela Township on the Monongahela River and south of Cumberland Township, extending west a distance of three miles from the Monongahela River, at a valuation of $300.00 per acre. Practically all of the Pittsburgh vein of coal in this township is being actively operated by various coal companies except the coal belonging to the H. C. Frick Coke Company and the Cumberland Coal Company in the northern part of the township and adjoining Cumberland Township. Most of the Pittsburgh coal south of the H. C. Frick block in Monongahela Township is drift coal, operated through slopes instead of by shaft. No appeals have been taken from the valuation in this township, and it is worth $500.00 more per acre than the coal in the rear end of Cumberland Township belonging to the appellant company.

33. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal of the Cumberland Coal Company might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the values, they did discuss the coal values with experts, and attorneys for the appellant company and with operators of other coal

tracts in Cumberland Township, and they did have a practical knowledge such as they could acquire in the limited [fol. 443a] time they had in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Cumberland Township.

34. The Commissioners have assessed the Pittsburgh or River vein of coal lying within the territorial limits of Cumberland Township at $260.00 an acre, that coal being a part of the contiguous block with an opening on the river and railroad in Jefferson Township, Greene County, Pennsylvania, on the north of Cumberland Township, and joined by another part of the block extending from the south of Cumberland Township through Monongahela to the river, both of which contacts with transportation immediately available gives an additional value to the coal at the rear end of Cumberland Township belonging to the appellants. Monongahela Township fronting on the river was valued at $300.00 per acre; Greene Township, lying three miles west of the Monongahela River, adjoining Cumberland Township on the south, was valued at $225.00 per acre; Whiteley Township, lying west of the land of the appellant in Greene Township and in Cumberland Township, most or all of which is owned by the Cumberland Coal Company, was valued at $90.00 per acre; Jefferson Township, lying north and west of Cumberland Township and having the advantages of transportation both by rail and river, is valued at $250.00 per acre. There is no evidence and no reason to believe that there is any material difference in the quality, quantity, depth below the surface, or character of the Pittsburgh or River vein of coal in these townships, except the outcrop coal in the southern portion of [fol. 444a] Monongahela Township, but on the contrary, it is in evidence that that vein of coal throughout these townships is uniform in quality and character, and most of the coal in these townships, except the outcrop in Monongahela Township, ranges in depth from 280 to 500 feet below the surface.

35. The map or plan, Exhibit B, which was offered in evidence with the date thereon noted, is approximately correct.

36. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4,000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that the development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed.

37. Approximately three-fifths of the coal in the western half of Cumberland Township belongs to the Cumberland Coal Company, appellant, and according to the map and testimony, something like two-fifths of it to the Buckeye Coal Company. None of this coal is in the hands of the [fol. 445a] original owners or persons who own the surface lands above the coal. It is practically admitted that this coal is held by the appellant company for future use and development as its needs may require for the United States Steel Company.

38. The only recent sales of coal in this township were to the Cumberland Coal Company, who were the purchasers of a tract in the extreme rear of Cumberland Township in 1921 or 1922, known as the Garard or Long Farm, of about 200 acres, for the price of $600.00 per acre; the Joseph Moredock tract of 360 acres in Greene Township, behind Cumberland, in 1925, at $600.00 per acre; the Keener tract in the lower edge of Greene Township was purchased in 1925 or 1926 at $650.00 per acre. Another Keener tract one-half mile south and four miles west of the Greene Township tract in Dunkard Township was sold at about the same time for $400.00 per acre. The John Lantz tract of approximately 400 acres in Whiteley and 400 acres in Greene Township, and directly in the rear of Cumberland Township, was purchased by the appellant in 1926 at $400.00 per acre. Five or six sales were made to H. A.

Phillips, an appellant in Perry and Wayne Townships, about 1924, at from $250.00 to $295.00 per acre.

39. The Board of Revision considered the above prices at which the coal was sold, covering a period of six years prior to the triennial assessment, in connection with all the other matters affecting value, such as location, transportation, future needs, cost of operation, etc.; and while some of the prices paid by the appellant were in pursuance of contracts made in 1919 when the market was better, only [fol. 446a] one or two farms were taken under the Grosscup options, and the others were purchased by appellant at the best prices it could obtain at the time, and this, in connection with other evidence, is more persuasive evidence of value at this time than any speculative features such as future needs, rate of development, cost of transportation, all of which were considered by appellant and its engineers when the purchases were made.

40. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with other classes of property and real estate throughout the country generally.

Conclusions of Law

1. Precepts were issued by the Commissioners of Greene County to the assessors, directing them to make the triennial assessment for the years 1928, 1929 and 1930, and the assessment and valuation made by the assessors was returned to the Commissioners of said county in regular form as directed by law.

2. The County Commissioners, on March 16, 1928, organized as a Board of Revision to revise, correct and equalize the valuations of all property taxable by law in the County of Greene as returned by the assessors for the various townships, boroughs, wards and districts in the county.

3. The Board of Revision has a legal right to raise or lower values fixed by the assessors upon all property taxable by law for county purposes, and it is the duty of the assessors and the Board of Revision to assess, rate and value all property "according to the actual value thereof and at such rates and prices for which the same would

[fol. 447a] separately bona fide sell" at public sale after full public notice.

4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a radio of one-third.

5. The specific complaint of the appellant seems to be that the front coal owned by the Buckeye Coal Company and the Crucible Fuel Company has been unduly favored in the valuation for tax purposes, and as between appellant and these companies, there has been discrimination and a lack of uniformity whereby the appellant would be compelled to pay an unfair and undue proportion of the taxes. Taking into consideration the fact that considerable of the coal of the Buckeye Coal Company is three miles back from the river and possibly some coal of the Crucible Fuel Company, the fact that 250 acres, defined as active coal, is assessed to the Crucible Fuel Company and the Buckeye Coal Company at $500.00 per acre, amounting to $125,000.00 each, and that other buildings, equipment and real estate of each of these companies is assessed to them at [fol. 448a] a valuation in the one case at $164,435.00, and in the other case at $377,891.00, there is not disclosed any substantial discrimination or lack of uniformity such as would entitle the appellant to a reduction of its assessment values. The appellant's property, or coal, having regard to the assessment of active coal and other property assessed to operating properties within the district, is not assessed at any higher rate than the coal property and plants in front of it and along the Monongahela River.

6. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River Vein of coal lying within the various townships, did not act arbitrarily and without due

regard to the facts necessary and essential to the proper determination of the valuations.

7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township and is not of the same value, and is not quite so accessible to market. The coal along the river and for a considerable area (much more than 250 acres) around the operating plants is worth $1000.00 per acre, and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust.

8. The Commissioners have not imposed upon appellant in this case, as owners of coal in Cumberland Township, un- [fol. 449a] just burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River Vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.

9. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to assess and value the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township but that each owner would be required to bear his, her or its just proportion of the taxes.

10. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.

11. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsyl-

vania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. [fol. 450a] While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent of their total acreage as exempt from taxation.

12. Having regard to the fifty per cent ratio used by the assessors and the Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just.

13. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusions of law. We have treated these requests as suggestions and they will be filed with this adjudication.

[fol. 451a] Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost

of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

[fol. 452a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSION OF LAW —Filed February 10, 1930

And now, to wit, February 8th, 1930, comes Cumberland Coal Company, by Kyle and Reinhart and Reed, Smith, Shaw & McClay, its attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in its 16th finding of fact in saying that the coal lands of the exceptant in Cumberland Township are connected by other coal lands of Cumberland Coal Company and H. C. Frick Coke Company with both the railroad and the river through Rices Landing Borough and Jefferson Township and that they are also connected with the river through its own coal lands in Monongahela Township and coal lands of the H. C. Frick Coke Company in Monongahela Township which have a frontage on the Monongahela River, and in not saying that these lands are contiguous only, and constitute part of a greater block of coal, and that there are no present operations or means of transportation connecting the said coal with the river or railroad.

The manner in which these coal lands will be developed is a matter for engineers and the owners in the future.

[fol. 453a] 2. The Court erred in its 19th finding of fact, which reads:

"19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thick-

ness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county."

for the following reasons:

(a) There is no evidence whatever to support this finding.

(b) The testimony shows that the County Commissioners did not take these things into consideration, had no knowledge and made no attempt to acquire any but the most general information in respect thereto.

3. The Court erred in that part of its 24th finding of fact which reads:

"* * * but the coal in Greene County * * * is not in direct competition with the fuel or steam coal shipped to the Lake Regions."

[fol. 454a] This is contrary to the undisputed testimony which shows that the only reason why it is not in competition is because of the discrimination in freight rates.

4. The Court erred in its 25th finding of fact in saying that the coal in the western half of Greene County is held in proportion of about two-thirds by speculators or holding companies and possibly one-third of it is still in the hands of the farmer or original owner.

There is no evidence to support this finding.

5. The Court erred in that part of its 27th finding of fact which reads: " * * * and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, * * * to establish any other zone for tax valuation purposes, than the township lines."

There is no evidence which would warrant this finding.

6. The Court erred in that part of its 28th finding of fact which reads: "The natural arrangements of the townships in Greene County, as will be observed by the map in evi-

dence, created substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. * * * The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and [fol. 455a] Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

This finding is contrary to the proved facts in this case.

7. The Court erred in that part of its 29th finding of fact, which reads: "Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines."

There is no evidence whatever to support this finding.

8. The Court erred in that part of the 33d finding of fact, which reads: "The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal of the Cumberland Coal Company might not be operated for many years, * * * and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Cumberland Township."

This finding is in direct contradiction to the positive testimony of witnesses and other findings of the Court.

9. The Court erred in its 34th finding of fact wherein it states that the coal being a part of the contiguous block with an opening on the river and railroad in Jefferson Township, Greene County, Pennsylvania, on the north of Cumberland Township and joined by another part of the block extending from the south of Cumberland Township [fol. 456a] through Monongahela Township to the river, both of which contacts with transportation immediately available give an additional value to the coal at the rear end of Cumberland Township belonging to the appellant.

There is no evidence in the case which would warrant this conclusion.

10. The Court erred in its 36th finding of fact, which reads:

"36. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed."

for the following reasons:

(a) The experts are men of practical knowledge, have constructed most of the plants in Greene County and have [fol. 457a] kept in touch with what the various owners of coal in that county are doing and their purposes.

(b) The testimony of the experts is clear and explicit and there is not a syllable in the case which either contradicts or throws doubt upon their veracity or the soundness of the opinions expressed by them.

11. The Court erred in that part of its 37th finding of fact which states that approximately three-fifths of the Pittsburgh or River vein of coal in Cumberland Township belongs to the appellant and two-fifths to the Buckeye Coal Company.

According to the Court's order findings three-fourths of the Pittsburgh or River vein of coal in the western half of Cumberland Township belongs to Cumberland Coal Company and one-fourth to Buckeye Coal Company.

12. The Court erred in its 38th finding of fact in not taking into consideration that the sales made, and referred to in this finding, were made long prior to 1928 and at a time when the market for virgin coal land was not depreci-

ated and before the slump, and that most of it was purchased under peculiar conditions, as testified to by Mr. Albright and others, and that these isolated sales were not proper evidence of the true, actual or market value of coal in the year in which the assessment was made.

13. The Court erred in its 39th finding of fact, which reads:

"39. The Board of Revision considered the above prices [fol. 458a] at which the coal was sold, covering a period of six years prior to the triennial assessment, in connection with all the other matters affecting value, such as location, transportation, future needs, cost of operation, etc.; and while some of the prices paid by the appellant were in pursuance of contracts made in 1919 when the market was better, only one or two farms were taken under the Grosscup options, and the others were purchased by appellant at the best prices it could obtain at the time, and this, in connection with other evidence, is more persuasive evidence of value at this time than any speculative features such as future needs, rate of development, cost of transportation, all of which were considered by appellant and its engineers when the purchases were made."

for the followings reasons:

(a) There is no testimony to support this conclusion.

(b) The undisputed testimony shows that this finding is contrary to fact.

14. The Court erred in its 40th finding of fact which reads:

"40. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with other classes of property and real estate throughout the country generally."

This finding is contrary to every fact proved in this case.

[fol. 459a] 15. The Court erred in its 4th conclusion of law, which reads:

"4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the

purposes of assessment, the Courts of this state have recognized as legal assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

for the following reasons:

(a) The Courts have never approved such principle, although where assessments have been made and they were uniform and did not bear unjustly against any owners of property, they permitted them to stand notwithstanding their disapproval of the practice.

(b) The finding of the Court shows the whole action of the Commissioners to be illegal, invalid, and void in that they recognized and adopted the ratio of 33⅓% of value in the First and Second Wards of the Borough of Waynesburg, Greene County, Pennsylvania, and 50% in every other borough and township in the county.

[fol. 460a] 16. The Court erred in its 5th conclusion of law, which reads:

"5. The specific complaint of the appellant seems to be that the front coal owned by the Buckeye Coal Company and the Crucible Fuel Company has been unduly favored in the valuation for tax purposes, and as between appellant and these companies, there has been discrimination and a lack of uniformity whereby the appellant would be compelled to pay an unfair and undue proportion of the taxes. Taking into consideration the fact that considerable of the coal of the Buckeye Coal Company is three miles back from the river, and possibly some coal of the Crucible Fuel Company, the fact that 250 acres, defined as active coal, is assessed to the Crucible Fuel Company and the Buckeye Coal Company at $500.00 per acre, amounting to $125,000. each, and that other buildings, equipment and real estate of each of these companies is assessed to them at a valuation in the one case at $164,435.00, and in the

other case at $377,891.00, there is not disclosed any substantial discrimination or lack of uniformity such as would entitle the appellant to a reduction of its assessment values. The appellant's property, or coal, having regard to the assessment of active coal and other property assessed to operating properties within the district, is not assessed at any higher rate than the coal property and plants in front of it and along the Monongahela River."

[fol. 461a] for the following reasons:

(a) This is misstatement of our complaint.

(b) This finding is not supported by any evidence.

(c) The statement of facts in this conclusion if pertinent or relevant to any issue are sufficient in themselves to show that the conclusion is not warranted and that there is a marked and clear discrimination against the exceptant and an undue proportion of taxes throughout the county has been put upon it.

17. The Court erred in its 6th conclusion of law, which reads:

"6. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River Vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations."

18. The Court erred in that part of its 7th conclusion of law, which reads:

"7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township * * * and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust."

[fol. 462a] for the following reasons:

The assessors adopted a rule that where the operating coal companies mined more than 75 acres in the preceding

year the assessment upon the 250 acres of coal immediately available for mining should be assessed at $500.00 an acre, yet they assessed the remainder of the coal in the township at $260.00 an acre irrespective of its location, distance from railroads or the river or other means of transportation, and notwithstanding the findings of fact by the Court that the coal lying in the western part of Cumberland Township was not of one-half the value of the coal owned by the operating companies fronting on the river.

19. The Court erred in its 8th conclusion of law, which reads:

"8. The Commissioners have not imposed upon appellant in this case, as owners of coal in Cumberland Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River Vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

20. The Court erred in its 9th conclusion of law, which reads:

"9. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to assess and value the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not [fol. 463a] be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township but that each owner would be required to bear his, her or its just proportion of the taxes."

This is erroneous in that the Court confines itself to values of coal within the township lines.

21. The Court erred in its 10th conclusion of law, which reads:

"10. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

22. The Court erred in its 11th conclusion of law, which reads:

"11. The Pittsburgh or River Vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. [fol. 464a] While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent of their total acreage as exempt from taxation."

for the following reasons:

(a) There is not and has not been for over one hundred years any such distinction as the Court says.

(b) There is no warrant or justification for allowing an owner who has title to both surface and coal or surface above 6% and charging the owners of coal with the full acreage without any deduction, and thus imposing a burden upon them of paying taxes upon six in every hundred acres, from which all the other owners of acreage in Greene County are relieved.

23. The Court erred in its 12th conclusion of law, which reads:

"12. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly [fol. 465a] higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not

relatively higher than other values but is practically uniform, equitable and just."

24. The Court erred in its 13th conclusion of law, which reads:

"This appeal should be dismissed at the cost of the appellant."

25. The Court erred in entering the following nisi decree:

'Nisi Decree

"And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"The appeal of the Cumberland Coal Company from the decision of the Board of County Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

[fol. 466a] "Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary."

Cumberland Coal Company. Reed, Smith, Shaw & McClay, Its Attorneys.

Duly sworn to by William Gates. Jurat omitted in printing.

[fol. 467a] We hereby accept service of a copy of the within exceptions this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

OPINION AND FINAL ORDER—Filed May 31, 1930

Twenty-three exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

The first exception to the Findings of Fact by the Court, is no exception at all. The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant company has certain advantages in transportation and development by rail and river within their control, which adds value to the whole contiguous block of coal owned and controlled by the appellant and the H. C. Frick Coke Company.

The Supreme Court has recently said in Lehigh & Wilkes-Barre Coal Co.'s Assessment, 298 Pa. 294, "Coal land assumes a higher value when it is engaged in active production or where land is part of an active mine * * *. A higher market value attaches to many separate contiguous tracts [fol. 468a] of land brought into one ownership. It thereafter is one piece of land and presents a much wider field for operation sustaining a greater investment of capital in production."

The continuity and extent of the block of coal controlled by the appellant and the H. C. Frick Coke Company not only appears by oral evidence, but by an inspection of the map offered in this case.

While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the second exception is dismissed.

The Board of Revision made an effort to obtain information peculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant company. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant company seemed to be to furnish such information as was within their power.

The third exception ignores the testimony of Mr. McGrew (transcript 213) and of Mr. Baton (transcript 65) as to the value of steam as compared with metallurgical coal.

The fourth exception to the twenty-fifth finding of fact may possibly be correct. The Court has the impression that the maps offered in evidence and the testimony of the wit-
[fol. 469a] nesses warranted the twenty-fifth finding of fact, which, however, is not controlling in this case.

The fifth exception to the twenty-seventh finding of fact as to there being no attempt to value coal in zones other than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township lines. The testimony of experts, based on scientific formulas and theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre Coal Co.'s Assessment, 298 Pa. 294.

The map offered by appellants in connection with evidence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by the sixth and ninth exceptions.

The seventh exception may possibly be correct but is not controlling.

The evidence supports the thirty-third finding of fact, which is the subject of the eighth exception, as well as the thirty-sixth finding of fact, which is the subject of the tenth exception. The scientific formulas of the engineers whose knowledge and experience the Court does not dispute, cannot be substituted for the evidence of market value, and if strictly followed, would do away entirely with valuations based on market value and sale prices.

[fol. 470a] The eleventh, twelfth, thirteenth and fourteenth exceptions to the thirty-seventh, thirty-eighth, thirty-ninth and fortieth findings of fact are not well taken because there was evidence in the case upon which the Court arrived at these findings.

The Court may have made some mistakes in the Findings of Fact of minor importance, not controlling on the main

issues, but after careful examination of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928, in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

[fol. 471a] Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 472a] In Court of Common Pleas of Greene County

No. 223, June Term, 1928

In the Matter of the Appeal of The Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Greene Township

Appearance Docket Entries.

And now, May 29, 1928, Petition and Appeal filed and the following:

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open Court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

[fol. 473a] It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing upon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

And now, July 14, 1928, præcipe for Subpœna Duces Tecum filed.

Same day Subpœna Duces Tecum issued.

Issue Docket

Trial List, July 23, 1928

And now, July 23, 1928, motion to quash subpœna filed and the following:

[fol. 474a] Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open court, after argument and in consideration thereof, it is ordered that the subpœna be quashed.

By the Court. A. H. Sayers, President Judge. Morgan Henderson, Prothonotary.

And now, to-wit, July 23, 1928, an exception to the foregoing order is allowed to the appellee.

A. H. Sayers. (Seal.)

And now, May 6, 1929, requests of appellants for finding of facts and conclusions of law, filed.

And now, May 6, 1929, requests of appellees for finding of facts and conclusions of law filed.

And now, January 13, 1930, Findings of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessment of property in said county from the triennial assessment for the year 1928, in this case is dismissed at the cost of the appellant. The Prothonotary shall give notice of [fol. 475a] this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, Exceptions to Findings of Fact and Conclusions of Law, filed.

We hereby accept service of a copy of the within Exceptions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attys. for County Commissioners.

Argument Calendar, March Term, 1930

And now, May 31, 1930, Opinion and Final Order filed.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-

clusions of the Court the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in [fol. 476a] said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Supreme Court of Pennsylvania to the Court of Common Pleas of Greene County filed.

And now, June 13, 1930, Bond with Cumberland Coal Company, as principal, and United States Fidelity and Guaranty Company, as security, in the sum of One Thousand ($1000.00) Dollars, filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceeding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

[fol. 477a] COMMONWEALTH OF PENNSYLVANIA,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, wherein In the Matter of the Appeal of the Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County sitting as a Board of Appeal, for the Revision and Equalization of Assessments

of Property in said County, from the Triennial Assessment for the Year 1928, so full and entire as the same remains of record before the said Court, at No. 223 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 2nd day of July, A. D. 1930.

Morgan Henderson, Prothonotary.

In Court of Common Pleas of Greene County

Petition for Appeal—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Cumberland Coal Company respectfully represents:

1. Your petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal lands situate in the Township of Greene in said County, which [fol. 478a] was assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as Board of Appeal for the Revision and Equalization and Assessments, and that said Board on May 4, 1928, over the objection of your petitioner, adjusted the valuation of all the Pittsburgh vein of coal in said township at $225.00 per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of

other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal [fol. 479a] in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore, your petitioner appeals from the action of the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and equitable, having due regard to the valuations and assessments made on other real estate in the County of Greene.

And it will ever pray, etc.

Cumberland Coal Company, by C. L. Albright, Ass't Secretary.

Duly sworn to by C. L. Albright. Jurat omitted in printing.

[fol. 480a] EXHIBIT "A"

11,956.66 Acres Pittsburgh Coal.

EXHIBIT "B"

11,956.66 Acres Pittsburgh Coal, Valuation $2,690,248.00.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

ORDER ALLOWING APPEAL

And Now, May, 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the a peal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is Further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to [fol. 481a] be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE—
Filed January 13, 1930

The Cumberland Coal Company, a corporation of Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed its appeal at the above number and term, covering coal lands in Greene Township, alleging as reasons for the appeal, that:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of [fol. 482a] other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed "active coal") at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

The final or adjusted valuation for assessment purposes in Greene Township was at the rate of $225.00 per acre for 11956.66 acres valued at $2,690,240.00, there being no change in the valuation returned by the township assessor.

At the time this appeal was taken, Cumberland Coal Company also took a similar appeal at No. 221 June Term, 1928, from the assessment of 9237 acres of Pittsburgh coal in Cumberland Township, valued at $2,401,620.00; at No. 222 June Term, 1928, from the assessment of 38.9 acres of Pittsburgh coal in Carmichaels Borough, valued at $10,-[fol. 483a] 114.00; at No. 224 June Term, 1928, from the assessment of 3126 acres of Pittsburgh coal in Perry Township, at a valuation of $343,860.00; and at No. 225 June Term, 1928, from the assessment of 6012 acres of Pittsburgh coal in Wayne Township, at a valuation of $510,-980.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Greene County Coal Company at No. 227 June Term, 1928, from the assessment of 3207 acres of

Pittsburgh coal in Perry Township, at a valuation of $352,-770.00; Henry A. Phillips at No. 228 June Term, 1928, from the assessment of 566 acres of Pittsburgh coal in Perry Township, at a valuation of $62,260.00; Piedmont Coal Company at No. 229 June Term, 1928, from the assessment of 3955.5 acres of Pittsburgh coal in Wayne Township, at a valuation of $336,192.00; Henry A. Phillips at No. 230 June Term, 1928, from the assessment of 6900.7 acres of Pittsburgh coal in Wayne Township at a valuation of $586,-559.00; Greene County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,950.00; Greene Improvement Company at No. 232 June Term, 1928, from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24,565.00; Mary K. Mapel, et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at [fol. 484a] a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1928, from the assessment of 138 acres of Pittsburgh coal in Wayne Township, at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,185.00.

At the trial of the appeals, on motion of counsel for the appellants and over objection of appellees, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; further that the Court apply all of the evidence taken in the appeals so joined whenever the same may be relevant and material and make separate decrees in each case in accordance therewith." (Transcript 1, page 10).

A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals above listed. From the evidence in this case, the Court finds the following facts:

1. Cumberland Coal Company is a corporation, having its principal office in the City of Pittsburgh, Pennsylvania.

2. Cumberland Coal Company owns in fee 11956.66 acres of Pittsburgh or River Vein of coal in Greene Township, Greene County, Pennsylvania, which was assessed by the

Assessors in that township for the triennial assessment of 1928, at $225.00 per acre, aggregating $2,690,240.00, and the valuation made by the assessors was not changed by [fol. 485a] the Commissioners, sitting as a Board of Revision and Equalization.

3. The Pittsburgh or River Vein of coal owned by Cumberland Coal Company within the limits of Greene County, is one contiguous block of coal, with the exception of a few smaller tracts, containing in all 64,754 acres, and lies partly in Jefferson Township, Jefferson Borough, Cumberland Township, Greene Township, Whiteley Township, Franklin Township, Wayne Township, Perry Township, Monongahela Township, Dunkard Township, and Carmichaels Borough, Greene County, Pennsylvania. One small detached tract of 132 acres adjoining Rices Landing Borough, and 203 acres lying in Monongahela and Cumberland Townships, Greene County, and possibly other small tracts are detached from the main body of coal.

4. The Cumberland Coal Company is a subsidiary or affiliated corporation with the H. C. Frick Coke Company and the United States Steel Company, and is what is termed a holding company, it not being engaged at this time in mining or operating the coal land owned by it; but its coal land adjoins the coal land of the H. C. Frick Coke Company, which has been until recently operating the said vein of coal in Rices Landing Borough and Jefferson Township, to the north and east of the main body of the coal of the Cumberland Coal Company.

5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present aban- [fol. 486a] doned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County, and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.

6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends

from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.

7. The Pittsburgh or River Vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, as disclosed by actual drilling tests, and is for the purposes of this appeal practically of the same character, quality and thickness, being from seven to nine feet thick, as it varies in different localities, and is valuable as a metallurgical or coking coal, as well as for steam and fuel purposes.

8. Major operations in this coal are conducted at Mather, in Morgan Township, by the Mathers Collieries Company; at Crucible by the Crucible Fuel Company; at Nemicolon by the Buckeye Coal Company; and in Dunkard Township [fol. 487a] by the Shannopin Coal Company at Bobtown. The whole Greene County front along the Monongahela River, above Cumberland Township, is taken up by smaller mines operating in the Pittsburgh vein, and in the Mapeltown or Sewickley vein of coal. The Sewickley vein of coal is operated and is assessed for taxation in Monongahela Township and possibly in Greene and Dunkard Townships.

9. Five appeals of the Cumberland Coal Company relate to lands in Carmichaels Borough, Cumberland Township, Greene Township, Perry Township and Wayne Township, which are parts of the contiguous block of 64,754 acres above described.

10. The coal in the Greene Township block extends from a line distant 2½ miles west and parallel with the Monongahela River and runs back along the south and west lines of Cumberland Township to the southern line of Jefferson Township a distance of about nine miles from the river. It is bounded on the south by Dunkard Township, and on the west by Whiteley Township. It does not touch the river at any place, and can only be reached, except through coal of the appellant in other townships, from the surface, by

shafts sunk to a depth of four hundred feet or more, and can be transported only by the construction of new railroads (either underground or on the surface) to the river or to other railroads a distance of 2½ miles at an expenditure of considerable money, except through other coal of appellant extending and opened through to the Cumberland Township block from the railroad and river, or through coal lands of appellant in Monongahela Township directly to the river.

[fol. 488a] 11. The Pittsburgh or River vein of coal owned by the Cumberland Coal Company, and lying within the limits of Greene Township, Greene County, Pennsylvania, is practically all the coal there is within that township except 302 acres belonging to the H. C. Frick Coke Company, for which the Cumberland Coal Company is a holding company. The coal lands of appellant and its affiliated company, the H. C. Frick Coke Company, amounting to over twelve thousand acres, including all of said vein of coal under the township except a very few acres, consists of one contiguous block, the line of which is almost parallel with the Monongahela River, being west of said river an average distance of about 2½ miles. At its southeast corner it is within about two miles of an operating broad gauge railroad which crosses the Monongahela River above Greensboro and follows along its eastern bank to the West Virginia state line. Most of the Pittsburgh coal in Monongahela Township is being operated principally by the Pittsburgh Steel Company at Alicia No. 2, and the Penn Pitt Coal and Coke Company, but there are a number of small mines in this township operating in the Pittsburgh vein of coal and in the Sewickley or Mapletown vein of coal. The Greene Township block of coal borders on the coal of the Cumberland Coal Company in Cumberland Township, it also touches coal of the Cumberland Coal Company in Jefferson Township, and is within three miles of the Monongahela Railroad running through Jefferson Township. Immediate access to this coal could be had through coal lands in Monongahela Township belonging to the Cumber-[fol. 489a] land Coal Company and the H. C. Frick Coke Company, which extend from this block to the Monongahela River. Along the southern border of Greene Township the Shannopin Coal and Coke Company is conducting a major operation in the Pittsburgh or River vein of coal.

12. While the coal in Monongahela Township is valued at $300.00 an acre, the valuation of active coal around the mines in said township raises the valuation of the coal considerably higher than $300.00 an acre. The market value of the coal in this township is about $600.00 per acre, and the coal in the front third of Greene Township is worth between five and six hundred dollars an acre. The coal in the extreme rear end of Greene Township has a market value of around $450.00 an acre. Taking all these matters into consideration, the valuation placed on the coal by the assessors and the Board of Revision, in this township, is not unjust, inequitable, discriminatory, nor does it lack uniformity, and in placing this value on the coal, the Board of Revision has considered the remoteness or accessibility of the coal to market, the cost of its operation, and the means and costs of its transportation.

13. The testimony taken upon the hearing of this appeal disclosed that with the exception of a few acres, the coal of the Pittsburgh or River vein within Greene Township has been sold and is and for several years has all been held and owned by the Cumberland Coal Company; that the most recent sale of coal of said vein in said township was the sale of the "Joseph Moredock", and "John F. Lantz" coal which is located partly in Greene Township and partly in [fol. 490a] the adjoining township of Whiteley, in which latter township appellant is the owner of 18,263 acres, more or less, of coal of said vein and the "Levi and Jesse Keener" coal of said vein in Greene Township all which was purchased by Cumberland Coal Company at a price equal to or in excess of double the assessed valuation as fixed by the county commissioners.

14. The assessors in Greene Township and throughout the county of Greene did not assess land of any character, farm lands, dwelling houses, business property or coal at its actual selling value or actual market value or at the actual price or sum which the lands would bring at public sale after full public notice, but they did attempt to assess all lands at a ratio of fifty per cent of its actual value, limited and defined by market value, throughout the county and in the township of Greene.

15. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the

actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands [fol. 491a] and of other real estate throughout the county.

16. No minute of their adoption of the fifty per cent ratio was made, but it was actually used by the Board of Revision in making the assessment in this case.

17. There has been a depreciation in the value of Pittsburgh coal in the past six years throughout Greene County, due in part to the discrimination in freight rates in favor of the West Virginia and Southern Districts against coal in this district, but the coal in Greene County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, and is being operated by steel companies for their own use or held in reserve by the Cumberland Coal Company, the H. C. Frick Coke Company, and other holding companies, for future needs in connection with the business of the production and manufacturing of iron and steel.

18. The coal in the western half of Greene County is held in proportion of about two-thirds by speculators or holding companies, and possibly one-third of it is still in the hands of the farmer or original owner.

19. It is practically admitted that the coal throughout Greene County is assessed at a price very much below its actual value or intrinsic worth, but also admitted that its market value has been depreciated along with the market value of farm lands, business buildings, private residences, and other real estate, and the depreciation in coal has been [fol. 492a] no greater proportionately than the depreciation in the value of any other real estate.

20. The territorial limits of the township and the burroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valu-

ation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.

21. The natural arrangement of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.

21½. The assessors and Board of Revision allowed a deduction of six per centum from the acreage where the owner owned the surface alone, or both the surface and the [fol. 493a] Pittsburgh or River vein of coal, and they did not allow a similar deduction in acreage to the appellant and other owners of severed coal, but assessed it at its full acreage.

22. Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River. Some slight differences and increase in price within the zones outlined are due to advantages in the way of transportation or nearness to trasportation by river or rail already available.

23. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal of the Cumberland Coal Company might not be operated for many years, and while they did not employ any experts to examine the

coal measures and make recommendations as to the values, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Cumberland Township, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discrimnate unfairly against the appellant company in placing a value on its coal in Greene Township.

24. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing [fol. 494a] with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed.

25. That appellant company is not an operating company, but is a holding company and is the owner of 11,956 contiguous acres of coal of the Pittsburgh or River vein located within Greene Township, which acreage, with the exception of about five hundred acres, comprises the entire acreage of the township of Greene; that appellant's coal in Greene Township adjoins on the east and is contiguous to appellant's block of 9237 contiguous acres of coal in Cumberland Township, and its coal in Cumberland Township is contiguous to and on the north adjoins 7800 acres of coal of said vein situate in Jefferson Township and owned by appellant which borders upon the Monongahela River and has an outlet thereon; that approximately the whole of appellant's coal in Greene Township was purchased by appellant company under the terms of the Peter S. Grosscup agreements for which coal appellant paid from six to seven [fol. 495a] hundred dollars per acre; that the Cumberland Coal Company is affiliated with and controlled by United

States Steel Corporation; and the H. C. Frick Coke Company is an operating company and is the owner of a large acreage of coal of said vein in the adjoining township of Jefferson and Rices Landing Borough upon which there is an open mine or shaft not now being operated; that the H. C. Frick Coke Company is affiliated with and controlled by United States Steel Corporation; all of which coal land in Jefferson Township is contiguous to other coal land of appellant in Cumberland Township which is contiguous to appellant's coal of said vein in the township of Greene; that exhibit B offered in evidence by appellant shows in color the outline of appellant's 11,956 acres of coal land in Greene Township from the assessment and valuation of which appellant has appealed and said exhibit also shows in color the outline of appellant's 9237 acres of coal in the adjoining townships of Cumberland as well as the 38.9 acres of coal in Carmichaels Borough from the assessment and valuation of which appellant has appealed, but exhibit B does not show in color the 7800 acres of appellant's coal in Jefferson township or the H. C. Frick Coke Company block of coal in Jefferson Township, both of which blocks of coal front upon and have outlets on the Monongahela River as does coal of both companies in Monongahela Township.

26. The only recent sales of coal near and in this township were to the Cumberland Coal Company, who were the [fol. 496a] purchasers of a tract in the extreme rear of Cumberland Township in 1921 or 1922, known as the Garard or Long Farm, of about 200 acres, for the price of $600.00 per acre; the Joseph Moredock tract of 360 acres in Greene Township, behind Cumberland, in 1925, at $600.00 per acre; the Keener tract in the lower edge of Greene Township was purchased in 1925 or 1926 at $650.00 per acre. Another Keener tract, one-half mile south and four miles west of the Greene Township tract, in Dunkard Township was sold at about the same time for $400.00 per acre. The John Lantz tract of approximately 400 acres in Whiteley and 400 acres in Greene Township, and directly in the rear of Cumberland Township, was purchased by the appellant in 1926 at $400.00 per acre. Five or six sales were made to H. A. Phillips, an appellant in Perry and Wayne Townships, about 1924, at from $250.00 to $295.00 per acre.

27. The Board of Revision considered the above prices at which the coal was sold, covering a period of six years prior to the triennial assessment, in connection with all the other matters affecting value, such as location, transportation, future needs, cost of operation, etc.; and while some of the prices paid by the appellant were in pursuance of contracts made in 1919 when the market was better, only one or two farms were taken under the Grosscup options, and the others were purchased by appellant at the best prices it could obtain at the time, and this, in connection with other evidence, is more persuasive evidence of value at this time than any speculative features such as future [fol. 497a] needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made.

28. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with other classes of property and real estate throughout the county generally.

29. The fact that the Pittsburgh coal in Greene Township practically all belongs to appellant, makes the assessment more equitable and just as to it than it might otherwise be since it owns the front coal with a market value of $600.00 and the rear coal with a market value of at least $450.00.

Conclusions of Law

1. Precepts were issued by the Commissioners of Greene County to the assessors, directing them to make the triennial assessment for the years 1928, 1929 and 1930, and the assessment and valuation made by the assessors was returned to the Commissioners of said county in regular form as directed by law.

2. The County Commissioners, on March 16, 1928, organized as a Board of Revision to revise, correct and equalize the valuations of all property taxable by law in the County of Greene as returned by the assessors for the various townships, boroughs, wards and districts in the county.

3. The Board of Revision has a legal right to raise or lower values fixed by the assessors upon all property taxable by law for county purposes, and it is the duty of the

assessors and the Board of Revision to assess, rate and [fol. 498a] value all property "according to the actual value thereof and at such rates and prices for which the same would separately bona fide sell" at public sale after full public notice.

4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.

5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.

6. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.

7. It was the duty of the Commissioners, acting as a [fol. 499a] Board of Revision and Equalization, to assess and value the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River Vein of coal in any particular township but that each owner would be required to bear his, her or its just proportion of the taxes.

8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have taken into consideration the various elements, which under

the statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.

9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual [fol. 500a] acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent of their total acreage as exempt from taxation.

10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of the opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellants property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just.

11. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusions of law. We have treated these requests as suggestions and they will be filed with this adjudication.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928, in this case is dismissed at the cost of the appellant. The Prothonotary shall give notice of [fol. 501a] this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

In Court of Common Pleas of Greene County

Exceptions to Findings of Fact and Conclusions of Law —Filed February 10, 1930

And now, to wit, February 8th, 1930, comes Cumberland Coal Company, by Kyle and Reinhart and Reed, Smith, Shaw & McClay, its attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in so much of its 11th finding of fact which reads:

"• • • • At its southeast corner it is within about two miles of an operating broad gauge railroad which crosses the Monongahela River above Greensboro and follows along its eastern bank to the West Virginia State line. Most of the Pittsburgh coal in Monongahela Township is being operated principally by the Pittsburgh Steel Com- [fol. 502a] pany at Alicia No. 2, and the Penn Pit Coal

and Coke Company, but there are a number of small mines in this township operating in the Pittsburgh vein of coal and in the Sewickley or Mapletown vein of coal. The Greene Township block of coal borders on the coal of the Cumberland Coal Company in Cumberland Township, it also touches coal of the Cumberland Coal Company in Jefferson Township, and is within three miles of the Monongahela Railroad running through Jefferson Township. Immediate access to this coal could be had through coal lands in Monongahela Township belonging to the Cumberland Coal Company and the H. C. Frick Coke Company, which extend from this block to the Monongahela River. Along the southern border of Greene Township the Shannopin Coal and Coke Company is conducting a major operation in the Pittsburgh or River vein of coal."

The foregoing statement of facts and the inferences to be drawn therefrom are unwarranted, and further, there was no evidence in this case that the best way to get this coal out was as stated in this finding, and the finding as a whole is unfair and unjust to this exceptant.

2. The Court erred in its 12th finding of fact, which reads:

"1. While the coal in Monongahela Township is valued at $300.00 an acre, the valuation of active coal around the mines in said township raises the valuation of the coal con- [fol. 503a] siderably higher than $300.00 an acre. The market value of the coal in this township is about $600.00 per acre, and the coal in the front third of Green Township is worth between five and six hundred dollars an acre. The coal in the extreme rear end of Greene Township has a market value of around $450.00 an acre. Taking all these matters into consideration, the valuation placed on the coal by the assessors and the Board of Revision, in this township, is not unjust, inequitable, discriminatory, nor does it lack uniformity, and in placing this value on the coal, the Board of Revision has considered the remoteness or accessibility of the coal to market, the cost of its operation, and the means and costs of its transportation."

for the reason that this is contrary to and not warranted by the evidence developed in this case.

3. The Court erred in its 13th finding of fact, which reads:

"13. The testimony taken upon the hearing in this appeal disclosed that with the exception of a few acres, the coal of the Pittsburgh or River vein within Greene Township has been sold and is and for several years has all been held and owned by Cumberland Coal Company; that the most recent sale of coal of said veing in said township was the sale of the 'Joseph Moredock,' and 'John F. Lantz' coal which is located partly in Greene Township and partly in the adjoining township of Whiteley, in which latter [fol. 504a] township appellant is the owner of 18,263 acres, more or less, of the coal of said vein and the 'Levi and Jesse Keener' coal of said vein in Green Township all which was purchased by Cumberland Coal Company at a price equal to or in excess of double the assessed valuation as fixed by the county commissioners."

for the following reasons:

That the Joseph Moredock, John F. Lantz and Levi and Jesse Keener sales were made prior to 1928 and were made for reasons peculiar to exceptant, and such sales are not evidence of the true market, real or actual value of the coal in that territory, as appears from the undisputed and uncontroverted testimony.

4. The Court erred in its 15th finding of fact, which reads:

"15. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other

[fol. 505a] coal lands and of other real estate throughout the county."

for the following reasons:

(a) There is no evidence to support this finding.

(b) The evidence of the County Commissioners shows that they did not take these things into consideration, had no knowledge and made no attempt to acquire any but the most general information with regard thereto.

5. The Court erred in so much of its 17th finding of fact which reads:

"* * * * but the coal in Green County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, * * *".

6. The Court erred in so much of its 20th finding of fact which states:

"* * * * and no attempt has been made in Greene County or *in any other county of Pennsylvania, or elsewhere,* so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines." (Italics ours.)

This is not warranted by the evidence.

7. The Court erred in its 21st finding of fact which reads:

"21. The natural arrangement of the townships in Greene County, as will be observed by the map in evidence, [fol. 506a] create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley,

Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

This finding is contrary to the proved facts in this case.

8. The Court erred in that part of its 22d finding of fact which reads: "Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines."

This finding is contrary to the facts developed in the testimony.

9. The Court erred in its 23d finding of fact, which reads:

"23. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into [fol. 507a] consideration the possibility that the coal of the Cumberland Coal Company might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the values, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Cumberland Township, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Green Township."

10. The Court erred in its 24th finding of fact, which reads:

24. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cum-

berland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and prob-
[fol. 508a] ably in more litigation than trying to adjust the valuations on township lines under the system now followed."

for the following reasons:

(a) The experts are men of practical knowledge, have constructed most of the plants in Greene County and have kept in touch with what the various owners of coal in that county are doing and their purposes.

(b) The testimony of the experts is clear and explicit and there is not a syllable in the case which either contradicts or throws doubt upon their veracity or the soundness of the opinions expressed by them.

11. The Court erred in its 25th finding of fact in so far as any inference can be drawn from the finding that these contiguous lands afford means of getting either to a railroad or to the river, as this is matter dependent upon the depth of the vein, drainage, and the cheapest and best outlet, and other matters which were not shown by the evidence and which are purely for the company and its engineers when it opens the coal.

12. The Court erred in its 26th finding of fact in so far as any inference can be drawn from said finding that the sales mentioned are a true index to the actual or market value of the coal in the year 1928, and in denying to the exceptant the explanation given by the witness Albright and others, which was uncontroverted, showing the conditions under which said coal was purchased, and why.

[fol. 509a] 13. The Court erred in its 27th finding of fact, which reads:

"27. The Board of Revision considered the above prices at which the coal was sold, covering a period of six years prior to the triennial assessment, in connection with all the other matters affecting value, such as location, transportation, future needs, cost of operation, etc.; and while some

of the prices paid by the appellant were in pursuance of contracts made in 1919 when the market was better, only on or two farms were taken under the Grosscup options, and the others were purchased by appellant at the best prices it could obtain at the time, and this, in connection with other evidence, is more persuasive evidence of value at this time than any speculative features such as future needs, rate of development and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made."

for the following reasons:

(a) There is no testimony to support this conclusion.

(b) The undisputed testimony shows that this finding is contrary to fact.

14. The Court erred in its 28th finding of fact, which reads:

"28. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with other classes of property and real estate throughout the county generally."

[fol. 510a] This finding is contrary to every fact proved in this case.

15. The Court erred in its 29th finding of fact, which reads:

"29. The fact that the Pittsburgh coal is Greene Township practically all belongs to appellant, makes the assessment more equitable and just as to it than it might otherwise be since it owns the front coal with a market value of $600.00, and the rear coal with a market value of at least $450.00.

16. The Court erred in its 4th conclusion of law, which reads:

"4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional

decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent. of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

for the following reasons:

(a) The Courts have never approved such principle, although where assessments have been made and they were [fol. 511a] uniform and did not bear unjustly against any owners of property, they permitted them to stand notwithstanding their disapproval of the practice.

(b) The finding of the Court shows the whole action of the Commissioners to be illegal, invalid and void in that they recognized and adopted the ratio of 33⅓% of value in the First and Second Wards of the Borough of Waynesburg, Greene County, Pennsylvania, and 50% in every other borough and township in the county.

17. The Court erred in its 5th conclusion of law, which reads:

"5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations."

18. The Court erred in its 6th conclusion of law, which reads:

"The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

19. The Court erred in its 7th conclusion of law in so far as it intends to confine the equalization of assessments to township lines.

[fol. 512a] 20. The Court erred in its 8th conclusion of law, which reads:

'8. The Commissioners, acting as a Board of Revision and Equalization have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have taken into consideration the various elements, which under the statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

21. The Court erred in its 9th conclusion of law which reads:

"9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent. on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent. on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no [fol. 513a] reduction of six per cent. should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent of their total acreage as exempt from taxation."

for the following reasons:

(a) There is not and has not been for over one hundred years any such distinction as the Court says.

(b) There is no warrant or justification for allowing an owner who has title to both surface and coal or surface above, 6% and charging the owners of coal with the full acreage without any deduction, and thus imposing a burden upon them of paying taxes upon six in every hundred acres, from which all the other owners of acreage in Greene County are relieved.

22. The Court erred in its 10th conclusion of law, which reads:

"10. Having regard to the fifty per cent. ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellants property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just."

[fol. 514 a] 23. The Court erred in its 11th conclusion of law, which reads:

"11. This appeal should be dismissed at the cost of the appellant."

24. The Court erred in entering the following nisi decree:

"Nisi Decree

"And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928, in this case is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Cumberland Coal Company, by Reed, Smith, Shaw & McClay, Its Attorneys.

[fol. 515a] *Duly sworn to by William Gates. Jurat omitted in printing.*

We hereby accept service of a copy of the within exceptions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

[fol. 516a] In Court of Common Pleas of Greene County

Opinion and Final Order—Filed May 31, 1930

Twenty-four exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

The first exception to the eleventh finding of fact by the Court sets forth that the statement of facts and the inferences to be drawn therefrom are unwarranted, and that there is no evidence in the case that the best way to get the coal out was as stated in the findings, which are alleged to be unfair and unjust.

The purpose of this inquiry was to ascertain the market value of coal lands upon which to base the assessment, and in ascertaining that value, the evidence was presented with the purpose of disclosing actual conditions affecting the coal in the neighborhood of where the several tracts under consideration were located in comparison with other tracts of coal and conditions surrounding in other localities and throughout the County of Greene. The evidence involved the locality of the coal, the nature and thickness of the vein, the quantity and quality of the coal, and the advantages or difficulties of mining and transportation to market. In the eleventh finding of fact the Court may have incorporated in its finding some names not appearing in the evidence, and some distances which it calculated by scale from the map offered in evidence by the appellant. The railroad routes [fol. 517a] described by the Court may have been possibly described more fully than the testimony of witnesses would warrant. The location of railroads, township lines and matters of a similar nature were testified to by several witnesses and in addition, the general facts with relation thereto, is a matter of common knowledge, of which the Court might almost be said to have judicial cognizance. We do not think any statement of fact with relation to this or other exception is unfair and unjust to the exceptant.

The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant company has certain advantages in transportation and future development by rail and river within their control which adds to the value of the block of coal in Greene Township belonging to the appellant.

The Supreme Court has recently said in Lehigh & Wilkes-Barre Coal Co.'s Assessment, 298 Pa. 294, "Coal land assumes a higher value when it is engaged in active production or where land is part of an active mine. * * *. A higher market value attaches to many separate contiguous tracts of land brought into one ownership. It therefore is one piece of land and presents a much wider field for operation sustaining a greater investment of capital in production."

The continuity and extent of the block of coal controlled by the appellant and the H. C. Frick Coke Company not only appears by oral evidence, but by an inspection of the map offered in this case.

[fol. 518a] While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the second exception is dismissed.

The Board of Revision made an effort to obtain information peculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant company. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant company seemed to be to furnish such information as was within their power.

The fifth exception to the seventeenth finding of fact ignores the testimony of Mr. McGrew (transcript 213) and of Mr. Baton (transcript 65) as to the value of the steam as compared with metallurgical coal.

The sixth exception to the twentieth finding of fact as to there being no attempt to value coal in zones other than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not

know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township lines. The testimony of experts, based on scientific formulas and theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre [fol. 519a] Coal Co.'s Assessment, 298 Pa. 294.

The map offered by appellants in connection with evidence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by various exceptions.

The eighth exception may possibly be correct, but is not controlling.

We are not disposed to dispute the qualifications of appellant's engineers, nor reflect on their ability or veracity as suggested in the tenth exception, nor can we substitute their scientific formulas for evidence of market value, which, if strictly followed, would do away entirely with valuations based on market value and sale prices.

The Court may have made some mistakes in the Findings of Fact but they seem to be of minor importance, not controlling on the main issues, and after careful examination of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of [fol. 520a] Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 521a] In Court of Common Pleas of Greene County

No. 224, June Term, 1928

In the Matter of the Appeal of The Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the year 1928, Perry Township

Reed, Smith, Shaw & McClay and Kyle & Reinhart, for Appellants.

A. A. Purman, Waychoff & Bradley, for the County of Greene.

Appearance Docket Entries

And now, May 29, 1928, Petition and Appeal filed and the following:

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due [fol. 522a] consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in said court.

It is further ordered that the notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

By the Court:

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

And now, July 14, 1928, præcipe for Subpœna Duces Tecum filed.

[fol. 523a] Same day Subpœna Duces Tecum issued.

Issue Docket

Trial List July 23, 1928

And now, July 23, 1928, Motion to quash subpœna filed and the following:

Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open Court, after argument and in consideration thereof, it is ordered that the subpœna be quashed.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, to-wit, July 23, 1928, an exception to the foregoing order is allowed to the appellee.

A. H. Sayers. (Seal.)

And now, May 6, 1929 requests of appellants for finding of facts and conclusion of law filed.

And now May 6, 1929, requests of appellees for finding of facts and conclusions of law filed.

And now, January 13, 1930, Findings of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the [fol. 524a] decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of Assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, Exceptions to Findings of Fact and Conclusions of Law filed.

We hereby accept service of a copy of the within exceptions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

Argument Calendar, Mch. Term, 1930

And now, May 31, 1930, Opinion and Final Order filed.

[fol. 525a] Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Supreme Court of Pennsylvania to the Court of Common Pleas of Greene county filed.

And now, June 13, 1930, Bond with Cumberland Coal Company, as principal, and United States Fidelity and [fol. 526a] Guaranty Company, as surety, in the sum of One Thousand ($1000.00) Dollars, filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

COMMONWEALTH OF PENNSYLVANIA,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, wherein In the Matter of the Appeal of the Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County Sitting as a Board of Appeal, for the Revision and Equalization of Assessments of Property in Said County, from the Triennial Assessment for the year 1928, so full and entire as the same remains of record before the said Court, at No. 224 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 2nd day of July, A. D. 1930.

Morgan Henderson, Prothonotary. (Seal.)

[fol. 527a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

PETITION AND APPEAL—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Cumberland Coal Company respectfully represents:

1. Your petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal land situate in the Township of Perry in said County, which was assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as a Board of Appeal for the Revision and Equalization of Assessments, and that said Board on May 4, 1928, over the objection of your petitioner adjusted the valuation of all the Pittsburgh vein of coal in said township at $110.00 per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

[fol. 528a] (a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore, your petitioner appeals from the action of the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and

prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and [fol. 529a] equitable, having due regard to the valuations and assessments made on other real estate in the County of Greene.

And it will ever pray, etc.

Cumberland Coal Company, by C. L. Albright, Ass't Secretary.

Duly sworn to by C. L. Albright. Jurat omitted in printing.

EXHIBIT "A"

3,126 Acres Pittsburgh Coal.

EXHIBIT "B"

3,126 Acres Pittsburgh Coal; Valuation, $343,860.00.

[fol. 530a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

ORDER ALLOWING APPEAL

And Now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further Ordered that notice of this appeal be given to the County Commissioners of Greene County, and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

[fol. 531a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE—Filed January 13, 1930

The Cumberland Coal Company, a corporation of Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed its appeal at the above number and term, covering coal lands in Perry Township, alleging as reasons for the appeal, that:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to [fol. 532a] the valuation and assessment of other coal and other classes of real estate in the County of Greene.

The final or adjusted valuation for assessment purposes in Perry Township was at the rate of $110.00 per acre for 3126 acres valued at $343,860.00, a reduction of Fifteen Dollars per acre on the valuation returned by the township assessor.

At the time this appeal was taken, the Cumberland Coal Company also took a similar appeal at No. 221 June Term, 1928, from the assessment of 9237 acres of Pittsburgh coal in Cumberland Township, valued at $2,401,620.00; at No. 222 June Term, 1928, from the assessment of 38.9 acres of

Pittsburgh coal in Carmichaels Borough, valued at $10,-114.00; at No. 223 June Term, 1928, from the assessment of 11,956.66 acres of Pittsburgh coal in Greene Township at a valuation of $2,690,248.00; and at No. 225 June Term, 1928, from the assessment of 6012 acres of Pittsburgh coal in Wayne Township, at a valuation of $510,980.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Greene County Coal Company at No. 227 June Term, 1928, from the assessment of 3207 acres of Pittsburgh coal in Perry Township, at a valuation of $352,-770.00; Henry A. Phillips at No. 228 June Term, 1928, from the assessment of 566 acres of Pittsburgh coal in Perry Township, at a valuation of $62,260.00; Piedmont Coal Company at No. 229 June Term, 1928, from the assessment of 3955.5 acres of Pittsburgh coal in Wayne Township, at a [fol. 533a] valuation of $336,192.00; Henry A. Phillips at No. 230 June Term, 1928, from the assessment of 6900.7 acres of Pittsburgh coal in Wayne Township at a valuation of $586,559.00; Greene County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,-950.00; Greene Improvement Company at No. 232 June Term, 1928, from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24.565.00; Mary K. Mapel, et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1929, from the assessment of 138 acres of Pittsburgh coal in Wayne Township, at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,-185.00.

At the trial of the appeals, on motion of counsel for the appellants and over objection of the appelles, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; and further that the Court apply all of the evidence

taken in the appeals so joined whenever the same may be relevant and material and make separate decrees in each case in accordance therewith." (Transcript 1, page 10.)

A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals [fol. 534a] above listed. From the evidence in this case, the Court finds the following facts:

1. Cumberland Coal Company is a corporation, having its principal office in the City of Pittsburgh, Pennsylvania.

2. Cumberland Coal Company owns in fee 3126 acres of Pittsburgh or River vein of coal in Perry Township, Greene County, Pennsylvania, which was assessed by the Assessors in that township for the triennial assessment of 1928, at $125.00 per acre, aggregating $390,750.00, and the valuation made by the assessors was reduced by the Commissioners, sitting as a Board of Revision and Equalization, to $110.00 per acre, aggregating $343,860.00.

3. The Pittsburgh or River Vein of coal owned by Cumberland Coal Company within the limits of Greene County, is one contiguous block of coal, with the exception of a few smaller tracts, containing in all 64,754 acres, and lies partly in Jefferson Township, Jefferson Borough, Cumberland Township, Greene Township, Whiteley Township, Franklin Township, Wayne Township, Perry Township, Monongahela Township, Dunkard Township, and Carmichaels Borough, Greene County, Pennsylvania. One small detached tract of 132 acres adjoining Rices Landing Borough, and 203 acres lying in Monongahela and Cumberland Townships, Greene County, and possibly other small tracts are detached from the main body of coal.

4. The Cumberland Coal Company is a subsidiary or affiliated corporation with the H. C. Frick Coke Company [fol. 535a] and the United States Steel Company, and is what is termed a holding company, it not being engaged at this time in mining or operating the coal land owned by it; but its coal land adjoins the coal land of the H. C. Frick Coke Company, which has been until recently operating the said vein of coal in Rices Landing Borough and Jefferson Township, to the north and east of the main body of the coal of the Cumberland Coal Company.

5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.

6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Township extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.

[fol. 536a] 7. The Pittsburgh or River vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, as disclosed by actual drilling tests, and is for the purposes of this appeal practically of the same character, quality and thickness, being from seven to nine feet thick, as it varies in different localties, and is valuable as a metailurgical or coking coal, as well as for steam and fuel purposes.

8. Major operations in this coal are conducted at Mather, in Morgan Township, by the Mathers Collieries Company; at Crucible by the Crucible Fuel Company; at Nemicolon by the Buckeye Coal Company; and in Dunkard Township by the Shannopin Coal Company at Bobtown. Practically the whole Greene County front along the Monongahela River, above Cumberland Township, and to the West Virginia line, is taken up by smaller mines operating in the Pittsburgh vein, and in the Mapeltown or Sewickley vein of coal. The Sewickley vein of coal is operated and is assessed for taxation in Monongahela Township and possibly in Greene and Dunkard Townships.

9. Five appeals of the Cumberland Coal Company relate to lands in Carmichaels Borough, Cumberland Township, Greene Township, Perry Township and Wayne Township, which are parts of the contiguous block of 64,754 acres above described. The only appeal of the H. C. Frick Coke Company relates to 302 acres of Pittsburgh coal on the eastern line of Greene Township adjoining a tract of some two thousand acres of coal belonging to the H. C. Frick Coke Company, and extending from Greene Township to [fol. 537a] and fronting on and along the Monongahela River, adjoining lands of the Cumberland Coal Company on the north and in Monongahela Township. A railroad is projected, from the Monongahela River over these coal lands and part of the rights of way have been purchased, but as yet no road has been constructed.

10. The eleven appeals relating to Perry and Wayne Townships will be discussed and considered together, in order that the findings and conclusions of the Court may be made generally to apply to all of them.

11. The Pittsburgh or River vein of coal lying within the limits of Perry Township consists of 3126 acres as shown upon the map, Exhibit B. This is unopened virgin coal as shown in yellow upon the map marked Exhibit B. It adjoins a block of 6012 acres belonging to the Cumberland Coal Company, situate immediately west of the Perry Township block and in Wayne Township. Both blocks are part of the tract of 64,754 acres of coal belonging to the Cumberland Coal Company, referred to in paragraph 3 above. The two tracts of coal are on the extreme southwest extension of the large block of coal owned by the Cumberland Coal Company and the H. C. Frick Coke Company, which extends on about a forty-five degree line through to the northeast boundary of Green County on the Monongahela River at Rices Landing and Clarksville, including a large block of coal in Jefferson Township belonging to each of said companies, from the assessment of which no appeal has been taken by either company. The two blocks of coal in Perry and Wayne Townships adjoin a block of coal of the Cumberland Coal Company in Whiteley Township, [fol. 538a] comprising practically, if not all, the Pittsburgh coal in that township, and extending eastwardly including all of the Pittsburgh or River vein of coal in Greene Town-

ship and including over 4000 acres belonging to both companies in the northern part of Monongahela Township and extending to the Monongahela River.

12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated by the Monongahela Railroad Company extending up Scotts Run in Monongahela County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad.

13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the construction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Brave and Blacksville. The H. A. [fol. 539a] Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small.

14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and others means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining town-

ships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore.

15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a pub-
[fol. 540a] lic sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation.

16. The Board of Revision and Equalization have assessed the adjoining coal of the Pittsburgh vein in Whiteley Township at $90.00 an acre. Practically all of this coal belongs to the Cumberland Coal Company and it has taken no appeal from this assessment. While a part of this coal is nearer to the Monongahela River than the most of Perry Township, and all of Wayne Township, it is very much more remote from any railroad already constructed than Perry Township or Wayne Township, and the Board, considering all the elements of value applying to the Pittsburgh or River vein of coal in Whiteley Township, have, in the judgment of the Court, adopted a fair valuation for Whiteley Township and one that the Court, if it was inclined to make a change, would say is too low.

17. On April 26, 1928, the county commissioners of Greene County, sitting as a Board of Revision, and after a hearing of all the appeals or protests of all the parties that had appealed from or protested the assessment and

valuation of coal of the Pittsburgh or River vein as fixed by the assessors of the various townships, boroughs, wards and districts in said county, said county commissioners reduced the valuation fixed by the assessor for Perry Township upon all coal of the Pittsburgh or River vein in said [fol. 541a] township from the value of $125.00 per acre and fixed and established the value of all coal of said vein in said township at the value of $110.00 per acre, and in Wayne Township have reduced the valuation from $125.00 to $85.00 per acre.

18. The assessors in Perry and Wayne Townships, and throughout the County of Greene, did not assess land of any character, farm lands, dwelling houses, business property or coal at its actual selling value or actual market value or at the actual price or sum which the lands would bring at public sale after full public notice, but they did attempt to assess all lands at a ratio of fifty per cent of its actual value, limited and defined by market value, throughout the county and in the Townships of Perry and Wayne.

19. The County Commissioners, sitting as a Board of Revision and equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.

20. No minute of their adoption of the fifty per cent ratio was made, but it was actually used by the Board of Re- [fol. 542a] vision in making the assessment in this case.

21. There has been a depreciation in the value of Pittsburgh coal in the past six years throughout Greene County, due in part to the discrimination in freight rates in favor of the West Virginia and Southern Districts against coal in this district, but the coal in Greene County is a metal-

lurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, and is being operated by steel companies for their own use or held in reserve by the Cumberland Coal Company, the H. C. Frick Coke Company, and other holding companies, for future needs in connection with the business of the production and manufacturing of iron and steel.

22. The coal in the western half of Greene County is held in the proportion of about two-thirds by speculators or holding companies, and possibly one-third of it is still in the hands of the farmer or original owner.

23. It is practically admitted that the coal throughout Greene County is assessed at a price very much below its actual value or intrinsic worth, but also admitted that its market value has been depreciated along with the market value of farm lands, business buildings, private residences, and other real estate, and the depreciation in coal has been no greater proportionately than the depreciation in the value of any other real estate.

24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for [fol. 543a] valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.

25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne.

The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.

26. Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River. Some slight differences and increase in price within the zones outlined are due to advantages in the way of transportation or nearness to transportation by river or rail already available.

[fol. 544a] 27. The Commissioners in revising and equalizing the assessments placed upon the Pittsburgh or River vein of coal allowed a deduction of six per centum from the acreage where the owner owned the surface alone, or both the surface and the Pittsburgh or River vein of coal, but they did not allow a similar deduction in acreage to the appellant but assessed it with the full acreage as shown by the deeds and surveys.

28. Appellant's complaint and the testimony offered by appellant was to the effect that the valuation placed upon its coal of the Pittsburgh or River vein by the Board of Revision, is unjust, inequitable, discriminatory and lacks uniformity for the reason that they assessed and valued all of the said vein of coal in Perry Township at the same valuation regardless of its location or proximity to market or means of transportation. The same objection is made as to Wayne and other townships. Its principal objection is that the township is not a proper unit of valuation and that the unit of valuation should be in smaller blocks of approximately 4000 acres each. The system proposed by appellants would still leave the same contention, that the coal on either side of any given line was substantially of the same value. The value of coal lands at present valuation is not so widely divergent within the boundaries of any given township as to require the adoption of a lessor unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of

[fol. 545a] the mining equipment and mine houses belonging to the operator.

29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to values, they did discuss the coal values with experts, attorneys for the appellant company and with the operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships.

30. There is no evidence and no reason to believe that there is any material difference in the quality, quantity, depth below the surface, or character of the Pittsburgh or River vein of coal in Perry and Wayne townships, and in the townships immediately surrounding them, but on the contrary, the evidence indicates that the vein of coal throughout these townships is uniform in quality and character, and of practically the same depth.

31. The map or plan, Exhibit B, which was offered in evidence with the date thereon noted, is approximately correct.

32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated [fol. 546a] in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to ad-

just the valuations on township lines under the system now followed.

33. The testimony taken upon the hearing of this appeal discloses that appellant is the owner of a contiguous block of 3126 acres of coal of the Pittsburgh or River vein in Perry Township of the total taxable value of $343,860.00; that the most recent sale or sales of coal of said vein in said township was the sale of the "Headley Heirs" coal and the sale of the "Osborne Wade" coal, "Eli Pethtel" coal and "Kinsey John" coal, all which coal of said vein was sold at a price in excess of double the assessed valuation as fixed by the county commissioners upon all the coal of said vein in Perry Township.

34. The testimony taken upon the hearing of this appeal discloses that appellant is the owner of a contiguous block of 6012 acres of coal of the Pittsburgh or River vein in Wayne Township of the total taxable value of $510,980.00; that the most recent sales or sales of coal of said vein in said township was the sale of the "Felix Bell" coal and the sale of the "Ben Fox" coal, "Eli Pethtel" coal and [fol. 547a] "Spencer Wade" coal, all which coal of said vein was sold at a price in excess of double the assessed valuation as fixed by the county commissioners upon all the coal of said vein in Wayne Township.

35. The appellants did offer some evidence as to the value of coal as shown by particular sales, that an undivided interest represented by stock in the Greene County Coal Company had been offered for sale at approximately $103.00 an acre; that an undivided interest in a tract of land in the northwest corner of Wayne Township had sold at $80.00 per acre; that the coal in Franklin Township, north of Wayne and Perry Townships, had recently sold for $225.00 an acre; that the Knutti coal located in West Virginia, near the southwest corner of Wayne Township, sold for something near $40.00 an acre at a public sale in which a brother, who represented a creditor, purchased part of the coal, and the Dunkard Valley Bank, another creditor, purchased another part of the coal. There was also a sale three-quarters of a mile south of the Pennsylvania line, of a certain tract of coal belonging to J. M. Johns, to his sister, Jessie V. Herrod, in which three tracts

of coal, totaling 167 acres, were sold for $6,025.00. Three of these sales were forced sales, one at least covering an undivided interest, and the evidence relating to these sales is not strongly indicative of a public sale in good faith and after due notice by a willing seller to a willing purchaser. They are treated by the Court as some indication of the state of the coal market and as having an influence on the price generally in Wayne and Perry Townships, which was taken into consideration in arriving at the conclusion, under all the evidence in the case, that $220.00 an [fol. 548a] acre was a fair market value for coal in Perry Township, and $170.00 per acre was a fair market value for coal in Wayne Township at the time the assessment was made.

36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time.

37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally.

Conclusions of Law

1. Precepts were issued by the Commissioners of Greene County to the assessors, directing them to make the triennial assessment for the years 1928, 1929 and 1930, and the assessment and valuation made by the assessors was returned to the Commissioners of said county in regular form as directed by law.

2. The County Commissioners, on March 16, 1928, organized as a Board of Revision to revise, correct and

[fol. 549a] equalize the valuations of all property taxable by law in the County of Greene as returned by the assessors for the various townships, boroughs, wards and districts in the county.

3. The Board of Revision has a legal right to raise or lower values fixed by the assessors upon all property taxable by law for county purposes, and it is the duty of the assessors and the Board of Revision to assess, rate and value all property "according to the actual value thereof and at such rates and prices for which the same would separately bona fide sell" at public sale after full public notice.

4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.

5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.

6. It was the duty of the Commissioners, acting as a [fol. 550a] Board of Revision and Equalization, to value and assess the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township and so that each owner throughout the County of Greene would be required to bear his, her or its just proportion of the taxes.

7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust

burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.

8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.

9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per [fol. 551a] cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually served by deed and is in the hands of different owners, or is served for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation.

10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just.

11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed

in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and [fol. 552a] valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments, and is uniform and conformable to law.

12. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusions of law. We have treated these requests as suggestions and they will be filed with this adjudication.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

[fol. 553a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW —Filed February 10, 1930

And now, to wit, February 8th, 1930, comes Cumberland Coal Company, by Kyle and Reinhart and Reed, Smith Shaw & McClay, its attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in its 5th finding of fact, which reads:

"5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river."

This finding is unfair to exceptant for the reason that the nearest line in Perry Township to Rices Landing on the Monongahela River is 14 miles distant (air line measure-[fol. 554a] ment), and the farthest point in that township is 16 miles (air line measurement).

2. The Court erred in its 6th finding of fact, which reads:

"6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemacolin and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships."

r the reason that the railroad at Nemacolin, referred in this finding, is at least 13 miles (air line measurement) from the lands of exceptant in Perry Township, d the railroad at Mather is 11 miles.

3. The Court erred in its 12th finding of fact, which ads:

"12. In addition to the railroads hereinbefore mentioned this opinion, there is a broad gauge railroad operated the Monongahela Railroad Company extending up cotts Run in Monongahela County, West Virginia, to rave, in the southwest corner of Wayne Township, Greene ounty, Pennsylvania. This railroad is along Dunkard ol. 555a] Creek, and at some points approaches very near the south line of Perry Township and touches the south ne of Wayne Township along Dunkard Creek. This is operating railroad that hauls coal and freight which delivered to consignees along the whole line, its principal int of delivery in Greene County being at Blacksville, est Virginia, and at Brave, in Wayne Township. A great al of coal is hauled over the Scotts Run end of this railad."

r the following reasons:

(a) The testimony shows that this railroad in point of ct is not a railroad worthy of the name.

(b) There is no evidence that the Court was justified in nding that this railroad is owned by the Monongahela Railad Company, or that the railroad gave any value to any nds or coal in proximity to it.

4. The Court erred in its 13th finding of fact, which reads:

"13. Generally, the coal in Wayne and Perry Townships n only be reached by shafts sunk from the surface to a pth of about five hundred feet, and the coal of the Cumberand Coal Company could be transported by the construction approximately three miles of railroad extending north om the Scotts Run railroad. The coal belonging to other ppellees in these two townships can be transported by the nstruction of additional railways or sidings that would be ol. 556a] but a short distance from the main line of the ilroad at Brave and Blacksville. The H. A. Phillips coal,

the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small."

There is nothing in the testimony which would warrant the conclusions drawn by the Court.

5. The Court erred in its 14th finding of fact, which reads:

"14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore."

6. The Court erred in its 15th finding of fact, which reads:

"15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from [fol. 557a] the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation."

7. The Court erred in its 19th finding of fact, which reads:

"19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the

actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, [fol. 558a] the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county."

8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct competition with the fuel or steam coal shipped to the lake regions.

9. The Court erred in its 24th finding of fact, which reads:

"24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines."

10. The Court erred in its 25th finding of fact, which reads:

"25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more [fol. 559a] or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River.

12. The Court erred in so much of its 28th finding of fact which reads:

"* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of opera- [fol. 560a] tion, including the value of the mining equipment and mine houses belonging to the operator."

13. The Court erred in its 29th finding of fact, which reads:

"29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships."

14. The Court erred in its 32d finding of fact which reads:

"32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that [fol. 561a] that development will not result in the movement

of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed."

15. The Court erred in its 33d finding of fact in so far as it determines the value of exceptant's entire holdings in Perry Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township.

16. The Court erred in its 36th finding of fact which reads:

"36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers [fol. 562a] when the purchases were made, and entered into their ideas of what the coal was worth at the time."

17. The Court erred in its 37th finding of fact which reads:

"37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally."

18. The Court erred in its 4th conclusion of law which reads:

"4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout

Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

19. The Court erred in its 5th conclusion of law, which reads:

"5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due [fol. 563a] regard to the facts necessary and essential to the proper determination of the valuations."

20. The Court erred in its 6th conclusion of law, which reads:

"6. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to value and assess the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township and so that each owner throughout the County of Greene would be required to bear his, her or its just proportion of the taxes."

21. The Court erred in its 7th conclusion of law, which reads:

"7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

22. The Court erred in its 8th conclusion of law, which reads:

"8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have [fol. 564a] taken into consideration the various elements, which under the Statutes and decisions of the Supreme

Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

23. The Court erred in its 9th conclusion of law, which reads:

"9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation."

24. The Court erred in its 10th conclusion of law, which reads:

[fol. 565a] "14. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellants property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just."

25. The Court erred in its 11th conclusion of law, which reads:

"11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, in-

equitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law."

26. The Court erred in its 12th conclusion of law, which reads:

[fol. 566a] "12. This appeal should be dismissed at the cost of the appellant."

27. The Court erred in entering the following nisi decree:

"Nisi Decree

"And now, January 13, 1930, upon consideration of the foregoing case, it is ordered adjudged and decreed as follows:

"The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Attest: Morgan Henderson, Prothonotary.

Cumberland Coal Company, Reed, Smith, Shaw & McClay, Its Attorneys.

[fol. 567a] *Duly sworn to by William Gates. Jurat omitted in printing.*

We hereby accept service of a copy of the within Exceptions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

[fol. 568a] In Court of Common Pleas of Greene County

Opinion and Final Order—Filed May 31, 1930

Twenty-seven exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

The Perry Township coal is part of the block owned by appellant extending from Wayne and Perry Townships on the south near rail transportation over the Scotts Run Railroad on the south to railroads and river transportation on the north and east. The extent of appellant's block of coal including the Perry Township block is a matter for consideration, and while Perry Township may be eleven to fourteen miles from river and rail transportation points available to appellants on the north and east as set up in appellant's exceptions 1 and 2, it is not far from the Shannopin operating mine, and within four miles of the Scotts Run on Monongahela Railroad at Blacksville. There are advantages accruing to appellants coal in Perry Township, also, by reason of its being a part of the larger block of coal with river and rail advantages as set forth in the 5th and 6th findings of fact to which exceptions one and two are taken.

There is just as much evidence in this case in support of the Court's findings with reference to the Scotts Run Railroad as there is any other railroad testified to by the various witnesses in this inquiry. It is a fair inference, in the absence of testimony to the contrary, that the railroads to [fol. 569a] Nemacolin, to Greensboro, to Mather and to Waynesburg were standard gauge railroads, engaged in the transportation of coal, and there was no detailed testimony with reference to these railroads because counsel on either side assumed that the Court knew the things which are matters of common knowledge to everybody with refer-

ence to the ability of these railroads to transport coal. The evidence of Mr. McGrew, an expert witness examined by the appellee in this case, is that the Scotts Run Railroad, controlled by the Monongahela Railroad, was a railroad of the common type engaged in the transportation of coal and other freight to points in Greene County near Perry Township and Wayne Township. There was no suggestion that it was not a railroad in the proper sense of the term, except in the questions asked by the appellant's counsel on cross examination, and appellants know that the proximity of the Scotts Run Railroad adds value to their coal in Perry and in Wayne Townships. Surely the appellants did not expect the Court to adopt the assumption of its counsel that the Scotts Run Railroad was not a railroad, in the absence of evidence to support such an assumption.

The purpose of this inquiry was to ascertain the market value of coal lands upon which to base the assessment, and in ascertaining that value, the evidence was presented with the purpose of disclosing actual conditions affecting the coal in the neighborhood of where the several tracts under consideration were located in comparison with other tracts of coal and conditions surrounding in other localities and [fol. 570a] throughout the County of Greene. The evidence involved the locality of the coal, the nature and thickness of the vein, the quantity and quality of the coal, and the advantages or difficulties of mining and transportation to market.

In the several findings of fact the Court may have incorporated in its findings some names not appearing in the evidence, and some distances which it calculated by scale from the map offered in evidence by the appellant. The railroad routes described by the Court may have been possibly described more fully than the testimony of witnesses would warrant. The location of railroads, township lines and matters of a similar nature were testified to by several witnesses and in addition, the general facts with relation thereto, are matters of common knowledge, of which the Court might almost be said to have judicial cognizance. We do not think any statement of fact with relation to this or other exception is unfair and unjust to the exceptant.

The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant

company has certain advantages in transportation and future development by rail and river within their control which add to the value of the block of coal in Perry Township belonging to the appellant.

The Supreme Court has recently said in Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294, "Coal land assumes a higher value when it is engaged in active production or where land is part of an active mine * * * A [fol. 571a] higher market value attaches to many separate contiguous tracts of land brought into one ownership. It thereafter is one piece of land and presents a much wider field for operation sustaining a greater investment of capital in production."

The continuity and extent of the block of coal controlled by the appellant and the H. C. Frick Coke Company not only appears by oral evidence, but by an inspection of the map offered in this case.

While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the second exception is dismissed.

The Board of Revision made an effort to obtain information preculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant company. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant company seemed to be to furnish such information as was within their power.

The eighth exception to the twenty-first finding of fact ignores the testimony of Mr. McGrew (transcript 213) and of Mr. Baton, (transcript 65) as to the value of steam as compared with metallurgical coal.

The ninth exception to the twenty-fourth finding of fact as to there being no attempt to value coal in zones other [fol. 572a] than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township

lines. The testimony of experts based on scientific formulas and theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294.

The map offered by appellants in connection with evidence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by various exceptions.

The eleventh exception to the twenty-sixth finding may possibly be correct, but is not controlling. The forty years experience of the Court as to how coal has been priced and sold by description as of a certain township, amounts almost to judicial notice of the custom.

We are not disposed to dispute the qualifications of appellant's engineers, nor reflect on their ability or veracity, nor can we substitute their scientific formulas for evidence of market value, which, if strictly followed, would do away entirely with valuations based on market value and sale prices.

The Court may have made some mistakes in the Findings of Fact but they seem to be of minor importance, not controlling on the main issues, and after careful examina-
[fol. 573a] tion of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, Presiding Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 574a] In Court of Common Pleas of Greene County

No. 225, June Term, 1928

In the Matter of the Appeal of the Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Wayne Township

Reed, Smith, Shaw & McClay and Kyle & Reinhart, for appellants.

A. A. Purman, Waychoff & Bradley, for the County of Greene.

Appearance Docket Entries

And now, May 29, 1928, Petition and Appeal filed and the following

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition [fol. 575a] be filed and that the appeal be and it hereby is allowed and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the Court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk

And now, July 14, 1928, Præcipe for Subpœna Duces Tecum filed.

Same day Subpœna Duces Tecum issued.

Issue Docket

Trial List, July 23, 1928

And now, July 23, 1928, Motion to quash subpœna filed and the following

[fol. 576a] Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open court, after argument and in consideration thereof, it is ordered that the subpœna be quashed.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, to-wit, July 23, 1928, an exception to the foregoing order is allowed to the appellee.

A. H. Sayers. (Seal.)

And now, May 6, 1929, requests of appellants for finding of facts and conclusions of law filed.

And now, May 6, 1929, requests of appellees for finding of facts and conclusions of law filed.

And now, January 13, 1930, Finding of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County,

sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the [fol. 577a] cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, Exceptions to Findings of Fact and Conclusions of Law filed.

We hereby accept service of a copy of the within exceptions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attys. for County Commissioners.

Argument Calendar, Mch. Term, 1930

And now, May 31, 1930, Opinion and Final Order filed.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board [fol. 578a] of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county for the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Supreme Court of Pennsylvania to the Court of Common Pleas of Greene County filed.

And now, June 13, 1930, Bond with Cumberland Coal Company, as principal, and United States Fidelity and Guaranty Company, as surety, in the sum of One Thousand ($1000.00) Dollars, filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceeding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

[fol. 579a] Commonwealth of Pennsylvania,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, wherein In the Matter of the Appeal of the Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County Sitting as a Board of Appeal, for the Revision and Equalization of Assessments of Property in Said County, from the Triennial Assessment for the Year 1928, so full and entire as the same remains of record before the said Court, at No. 225 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 3rd day of July, A. D. 1930.

Morgan Henderson, Prothonotary. (Seal.)

IN COURT OF COMMON PLEAS OF GREENE COUNTY

PETITION AND APPEAL—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Cumberland Coal Company respectfully represents:

1. Your petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal land situ- [fol. 580a] ate in the Township of Wayne in said County, which was assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as a Board of Appeal for the Revision and Equalization of Assessments, and that said Board on May 4, 1928, over the objection of your petitioner, adjusted the valuation of all the Pittsburgh vein of coal in said township at eighty-five Dollars per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the Commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and unequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uni- [fol. 581a] formity, as the said Commissioners have as-

sessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore, your petitioner appeals from the action of the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and equitable, having due regard to the valuations and assessments made on other real estate in the County of Greene.

And it will ever pray, etc.

Cumberland Coal Company, by C. L. Albright, Ass't Secretary.

Duly sworn to by C. L. Albright. Jurat omitted in printing.

[fol. 582a] EXHIBIT "A"

6,012 Acres Pittsburgh Coal.

EXHIBIT "B"

6,012 Acres Pittsburgh Coal; Valuation, $510,980.00.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

ORDER ALLOWING APPEAL

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in said court.

It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be [fol. 583a] agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

In Court of Common Pleas of Greene County

Findings of Fact, Conclusions of Law, and Decree—Filed January 13, 1930

The Cumberland Coal Company, a corporation of Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed its appeal at the above number and term, covering coal lands in Wayne Township, alleging as reasons for the appeal that:

(a) Said Assessors and Commissioners have discrimi- [fol. 584a] nated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in

the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

The final or adjusted valuation for assessment purposes in Wayne township was at the rate of $85.00 per acre for 6,012 acres valued at $510,980.00, a reduction of Forty Dollars per acre on the valuation returned by the township assessor. The correct total adjusted valuation should be $511,020.00.

At the time this appeal was taken, the Cumberland Coal Company also took a similar appeal at No. 221 June Term, 1928, from the assessment of 9237 acres of Pittsburgh coal in Cumberland Township, valued at $2,401,620.00; at No. [fol. 585a] 222 June Term, 1928, from the assessment of 38.9 acres of Pittsburgh coal in Carmichaels Borough, valued at $10,114.00; at No. 223 June Term, 1928 from the assessment of 11,956.66 acres of Pittsburgh coal in Greene Township at a valuation of $2,690,248.00; and at No. 224 June Term, 1928, from the assessment of 3126 acres of Pittsburgh coal in Perry Township, at a valuation of $343,-860.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Greene County Coal Company at No. 227 June Term, 1928, from the assessment of 3207 acres of Pittsburgh coal in Perry Township, at a valuation of $352,-770.00; Henry A. Phillips at No. 228 June Term, 1928, from the assessment of 566 acres of Pittsburgh coal in Perry Township, at a valuation of $62,260.00; Piedmont Coal Company at No. 229 June Term, 1928, from the assessment of 3955.5 acres of Pittsburgh coal in Wayne Township, at a valuation of $336,192.00; Henry A. Phillips at No. 230 June Term, 1928, from the assessment of 6900.7 acres of Pittsburgh coal in Wayne Township at a valuation of $586,-559,00; Greene County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,950.00; Greene Improvement Company at No. 232 June Term, 1928,

from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24,565.00; Mary K. [fol. 586a] Mapel, et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1928, from the assessment of 138 acres of Pittsburgh coal in Wayne Township at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,185.00.

At the trial of the appeals, on motion of counsel for the appellants and over objection of the appellees, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; and further that the Court apply all of the evidence taken in the appeals so joined whenever the same may be relevant and material and make separate decrees in each case in accordance therewith." (Transcript 1, page 10).

A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals above listed. From the evidence in this case, the Court finds the following facts:

1. Cumberland Coal Company is a corporation of Pennsylvania, having its principal office in the City of Pittsburgh, Pennsylvania.

2. Cumberland Coal Company owns in fee 6012 acres of Pittsburgh or River vein of coal in Wayne Township, Greene County, Pennsylvania, which was assessed by the [fol. 587a] Assessors in that township for the triennial assessment of 1928, at $125.00 per acre, aggregating $751,500.00, and the valuation made by the assessors was reduced by the Commissioners, sitting as a Board of Revision and Equalization, to $85.00 per acre, aggregating $511,020.00.

3. The Court adopts the Findings of Fact in paragraphs 3 to 37, inclusive, and the Conclusions of Law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Town-

ship, at No. 224 June Term, 1928, this day filed, in which facts and law applicable to Wayne Township are found, and makes them and each of them a part of this opinion.

4. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusions of law. We have treated these requests as suggestions and they will be filed with this adjudication.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, [fol. 588a] and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

In Court of Common Pleas of Greene County

Exceptions to Findings of Fact and Conclusions of Law —Filed February 20, 1930

And now to wit, February 8th, 1930, comes Cumberland Coal Company, by Kyle and Reinhart and Reed, Smith, Shaw & McClay, its attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in its 5th finding of fact, which reads:

"5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a [fol. 589a] block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river."

This finding is unfair to exceptant for the reason that the nearest line in Wayne Township to Rices Landing on the Monongahela River is 14 miles distant (air line measurement), and the farthest point in that township is 17½ miles (air line measurement).

2. The Court erred in its 6th finding of fact, which reads:

"6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships."

for the reason that the railroad at Nemicolon, referred to in this finding, is at least 16 miles (air line measurement) from the lands of exceptant in Wayne Township, and the railroad at Mather is 11 miles.

3. The Court erred in its 12th finding of fact, which reads:

[fol. 590a] "12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard

Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blackville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad."

for the following reasons:

(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

(b) There is no evidence that the Court was justified in finding that this railroad is owned by the Monongahela Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it.

4. The Court erred in its 13th finding of fact, which reads:

"13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cum- [fol. 591a] berland Coal Company could be transported by the construction of approximately three miles of railroad extending north from Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Brave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small."

There is nothing in the testimony which would warrant the conclusions drawn by the Court.

5. The Court erred in its 14th finding of fact, which reads:

"14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in

Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore."

[fol. 592a] 6. The Court erred in its 15th finding of fact, which reads:

"15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation."

7. The Court erred in its 19th finding of fact, which reads:

"19. The County Commissioners, sitting as a Board of [fol. 593a] Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or

available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county."

8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct competition with the fuel or steam coal shipped to the lake regions.

9. The Court erred in its 24th finding of fact, which reads:

"24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines."

10. The Court erred in its 25th finding of fact, which reads:

[fol. 594a] "25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

The uncontroverted testimony shows Wayne Township to be in the third zone and not in the second zone as the Court has said. There is no evidence to support this finding.

11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River.

[fol. 595a] 12. The Court erred in so much of its 28th finding of fact which reads:

"* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator."

13. The Court erred in its 29th finding of fact, which reads:

"29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships."

[fol. 596a] 14. The Court erred in its 32d finding of fact which reads:

"32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with

the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed."

15. The Court erred in its 34th finding of fact in so far as it determines the value of exceptant's entire holdings in Wayne Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township.

16. The Court erred in its 36th finding of fact which reads:

"36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this [fol. 597a] triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time."

17. The Court erred in its 37th finding of fact which reads:

"37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally."

18. The Court erred in its 4th conclusion of law which reads:

"4. Nothwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout [fol. 598a] Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

19. The Court erred in its 5th conclusion of law, which reads:

"5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations."

20. The Court erred in its 6th conclusion of law, which reads:

"6. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to value and assess the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township and so that each owner throughout the County of Greene would be required to bear his, her or its just proportion of the taxes."

21. The Court erred in its 7th conclusion of law, which reads:

"7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust [fol. 599a] burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

22. The Court erred in its 8th conclusion of law, which reads:

"8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

23. The Court erred in its 9th conclusion of law, which reads:

"9. The Pittsburgh or River vein of coal underlying lands throughout Greene County, is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who [fol. 600a] still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation."

24. The Court erred in its 10th conclusion of law, which reads:

"10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just."

25. The Court erred in its 11th conclusion of law, which reads:

"11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's [fol. 601a] coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law."

By the 3d findings of facts in this case, the Court adopts the findings of fact in paragraphs 3 to 37, inclusive, and the conclusions of law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, and the foregoing Exceptions refer to the paragraphs in the findings of fact and conclusions of law in the Cumberland Coal Company, Perry Township, case.

26. The Court erred in its 4th finding of fact which reads:

"4. This appeal should be dismissed at the cost of the appellant."

27. The Court erred in entering the following nisi decree:

"Nisi Decree

"And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

[fol. 602a] "The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel

of record, and unless exceptions are filed there to within 30 days, said decree shall be entered as a final decree.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Cumberland Coal Company, by Reed, Smith, Shaw & McClay, Its Attorneys.

Duly sworn to by William Gates. Jurat omitted in printing.

[fol. 603a] We hereby accept service of a copy of the within Exceptions, this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

OPINION AND FINAL ORDER—Filed May 31, 1930

Twenty-seven exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

The Wayne Township coal is part of the block owned by appellant extending from Wayne and Perry Townships on the south near rail transportation over the Scotts Run Railroad on the south to railroads and river transportation on the north and east. The extent of appellant's block [fol. 604a] of coal including the Wayne Township block is a matter for consideration, and while appellant's coal in Wayne Township may be eleven to fourteen miles from river and rail transportation points available to appellants on the north and east as set up in appellant's exceptions 1 and 2, it is not far from the Shannopin operating mine, and within four miles of the Scotts Run or Monongahela Railroad at Blacksville. There are advantages accruing to appellant's coal in Wayne Township, also, by reason of its being a part of the larger block of coal with river and

rail advantages as set forth in the 5th and 6th findings of fact to which exceptions one and two are taken.

There is just as much evidence in this case in support of the Court's findings with reference to the Scotts run Railroad as there is any other railroad testified to by the various witnesses in this inquiry. It is a fair inference, in the absence of testimony to the contrary, that the railroads to Nemacolin, to Greensboro, to Mather and to Waynesburg were standard gauge railroads, engaged in the transportation of coal, and there was no detailed testimony with reference to these railroads because counsel on either side assumed that the Court knew the things which are matters of common knowledge to everybody with reference to the ability of these railroads to transport coal. The evidence of Mr. McGrew, an expert witness sworn by the county in this case, is that the Scotts Run Railroad, controlled by the Monongahela Railroad, was a railroad of the common type engaged in the transportation of coal [fol. 605a] and other freight to points in Greene County near Perry Township and Wayne Township. There was no suggestion that it was not a railroad in the proper sense of the term, except in the questions asked by the appellant's counsel on cross examination, and appellants know that the proximity of the Scotts Run Railroad adds value to their coal in Perry and Wayne Townships. Surely the appellants did not except the Court to adopt the assumption of its counsel that the Scotts Run Railroad was not a railroad, in the absence of evidence to support such an assumption.

The purpose of this inquiry was to ascertain the market value of coal lands upon which to base the assessment, and in ascertaining that value, the evidence was presented with the purpose of disclosing actual conditions affecting the coal in the neighborhood of where the several tracts under consideration were located in comparison with other tracts of coal and conditions surrounding in other localities and throughout the County of Greene. The evidence involved the locality of the coal, the nature and thickness of the vein, the quantity and quality of the coal, and the advantages or difficulties of mining and transportation to market. In the several findings of fact the Court may have incorporated in its findings some names not appearing in the evidence and some distances which it calculated by

scale from the map offered in evidence by the appellant. The railroad routes described by the Court may have been possibly described more fully than the testimony of wit- [fol. 606a] nesses would warrant. The location of railroads, township lines and matters of a similar nature were testified to by several witnesses and in addition, the general facts with relation thereto, are matters of common knowledge, of which the Court might almost be said to have judicial cognizance. We do not think any statement of fact with relation to this or other exception is unfair and unjust to the exceptant.

The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant company has certain advantages in transportation and future development by rail and river within their control which add to the value of the block of coal in Wayne Township belonging to the appellant.

The Supreme Court has recently said in Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294, "Coal land assumes a higher value when it is engaged in active production or where land is part of an active mine. * * * A higher market value attaches to many separate contiguous tracts of land brought into one ownership. It thereafter is one piece of land and presents a much wider field for operation sustaining a greater investment of capital in production."

The continuity and extent of the block of coal controlled by the appellant and the H. C. Frick Coke Company not only appears by oral evidence, but by an inspection of the map offered in this case.

While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the [fol. 607a] Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the second exception is dismissed.

The Board of Revision made an effort to obtain information peculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant company. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant

Company seemed to be to furnish such information as was within their power.

The eighth exception to the twenty-first finding of fact ignores the testimony of Mr. McGrew (transcript 213) and of Mr. Baton (transcript 65) as to the value of steam as compared with metallurgical coal.

The ninth exception to the twenty-fourth finding of fact as to there being no attempt to value coal in zones other than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township lines. The testimony of experts, based on scientific formulas and theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294.

The map offered by appellants in connection with evi- [fol. 608a] dence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by various exceptions.

The eleventh exception to the twenty-sixth finding may possibly be correct, but is not controlling. The forty years' experience of the Court as to how coal has been priced and sold by description as of a certain township, amounts almost to judicial notice of the custom.

We are not disposed to dispute the qualifications of appellant's engineers, nor reflect on their ability or veracity, nor can we substitute their scientific formulas for evidence of market value, which, if strictly followed, would do away entirely with valuations based on market value and sale prices.

The Court may have made some mistakes in the Findings of Fact but they seem to be of minor importance, not controlling on the main issues, and after careful examination of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the [fol. 609a] Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 610a] In Court of Common Pleas of Greene County

No. 230, June Term, 1928

In the Matter of the Appeal of Henry A. Phillips from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Wayne Township

Reed, Smith, Shaw & McClay and Kyle & Reinhart, for Appellant.

A. A. Purman, Waychoff & Bradley, for County of Greene.

And now, May 29, 1928, Petition and Appeal filed and the following:

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due [fol. 611a] consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russel I. Lemley, Clerk.

And now, July 14, 1928, Præcipe for Subpœna Duces Tecum filed.

Issue Docket

Trial List, July 23, 1928

[fol. 612a] And now, July 23, 1928, Motion to quash subpœna filed and the following

Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open court in consideration thereof, it is ordered that the subpœna be quashed.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, to-wit, July 23, 1928, an exception to the foregoing order is allowed to appellee.

A. H. Sayers. (Seal.)

And now, May 6, 1929, requests of appellants for finding of facts and conclusions of law filed.

And now, May 6, 1929, requests of appellees for finding of facts and conclusions of law filed.

And now, January 13, 1930, Findings of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of Henry A. Phillips from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of [fol. 613a] property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, Exceptions to Findings of Fact and Conclusions of Law filed.

We hereby accept service of a copy of the within exceptions this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff.

Argument Calendar, March Term, 1930

And now, May 31, 1930, Opinion and Final Order filed.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and

it is ordered, adjudged and decreed that the appeal of Henry A. Phillips from the decision of the Board of Com-
[fol. 614a] missioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellant excepts to the ruling of the Court on exceptions, and to its entry of the foregoing order, and asks that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Supreme Court of Pennsylvania to the Court of Common Pleas of Greene County filed.

And now, June 13, 1930, Bond with Henry A. Phillips, as principal, and United States Fidelity and Guaranty Company, as surety, in the sum of One Thousand ($1000.00) Dollars, filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceeding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

[fol. 615a] Commonwealth of Pennsylvania,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, wherein In the Matter of the Appeal of Henry A. Phillips from the decision of the Board of Commissioners of Greene County Sitting as a Board of Appeal, for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, so full and entire as the same remains of record

before the said Court, at No. 230 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 16th day of July, A. D. 1930.

Morgan Henderson, Prothonotary. (Seal.)

In Court of Common Pleas of Greene County

Petition and Appeal—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Henry A. Phillips respectfully represents:

1. Your petitioner is a resident of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal land situate in the Township of Wayne, in said County, which was [fol. 616a] assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as a Board of Appeal for the Revision and Equalization of Assessments, and that said Board on May 4, 1928, over the objection of your petitioner, adjusted the valuation of all the Pittsburgh vein of coal in said township at $85.00 per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative

rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal [fol. 617a] in the same township or borough at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore your petitioner appeals from the action of the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and equitable, having due regard to the valuations and assessments made on other real estate in the County of Greene.

And he will ever pray, etc.

Henry A. Phillips.

Duly sworn to by Henry A. Phillips. Jurat omitted in printing.

[fol. 618a] EXHIBIT "A"

	Acres
Phillips, Henry A., Pittsburgh Coal	6,643
Phillips, Henry A., Pittsburgh Coal	220
Rush, Chas. H., Pittsburgh Coal	32⅓
Smith, Mrs. Roy M., Pittsburgh Coal	5½
	6,900.7

EXHIBIT "B"

	Acres	Valuation
Phillips, Henry A., Pittsburgh Coal	6,643	$564,655.00
Phillips, Henry A., Pittsburgh Coal	220	18,700.00
Rush, Charles H., Pittsburgh Coal	32⅕	2,737.00
Smith, Mrs. Roy M., Pittsburgh Coal	5½	467.00
	6,900.7	586,559.00

[fol. 619a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

ORDER ALLOWING APPEAL

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in said court.

It is Further Ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

[fol. 620a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE—Filed January 13, 1930

Henry A. Phillips, a taxable, residing in Pittsburgh, Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a

Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed his appeal at the above number and term, covering coal lands in Wayne Township, alleging as reasons for the appeal, that:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other [fol. 621a] classes of real estate in the County of Greene.

The final or adjusted valuation of Henry A. Phillips for assessment purposes in Wayne Township was at the rate of $85.00 per acre for 6900.7 acres valued at $586,559.00, a reduction of Forty Dollars per acre on the valuation returned by the township assessor.

At the time this appeal was taken, the Cumberland Coal Company also took a similar appeal at No. 221 June Term, 1928, from the assessment of 9237 acres of Pittsburgh coal in Cumberland Township, valued at $2,401,620.00; at No. 222 June Term, 1928, from the assessment of 38.9 acres of Pittsburgh coal in Carmichaels Borough, valued at $10,-114.00; at No. 223 June Term, 1928, from the assessment of 11,956.66 acres of Pittsburgh coal in Greene Township at a valuation of $2,690,248.00; at No. 224 June Term, 1928, from the assessment of 3126 acres of Pittsburgh coal in Perry Township, at a valuation of $343,860.00; and at No. 225 June Term, 1928, from the assessment of 6012

acres of Pittsburgh coal in Wayne Township at a valuation of $510,980.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Greene County Coal Company at No. 227 June Term, 1928, from the assessment of 3207 acres of Pittsburgh coal in Perry Township, at a valuation of $352,770.00; Henry A. Phillips at No. 228 June Term, 1928, [fol. 622a] from the assessment of 566 acres of Pittsburgh coal in Perry Township, at a valuation of $62,260.00; Piedmont Coal Company at No. 229 June Term, 1928, from the assessment of 3955.5 acres of Pittsburgh coal in Wayne Township, at a valuation of $336,192.00; Greene County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,950.00; Greene Improvement Company at No. 232 June Term, 1928, from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24,565.00; Mary K. Mapel et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1928, from the assessment of 138 acres of Pittsburgh coal in Wayne Township, at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,185.00.

At the trial of the appeals, on motion of counsel for the appellants and over objection of the appellees, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; and further that the Court apply all of the evidence taken in the appeals so joined whenever the same may be relevant and material and make separate decrees [fol. 623a] in each case in accordance therewith." (Transcript 1, page 10.)

A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals

above listed. From the evidence in this case, the Court finds the following facts:

1. Henry A. Phillips, a taxable, is a resident of the City of Pittsburgh, Allegheny County, Pennsylvania.

2. Henry A. Phillips owns in fee 6900.7 acres of Pittsburgh or River vein of coal in Wayne Township, Greene County, Pennsylvania, which was assessed by the Assessors in that township for the triennial assessment of 1928, at $125.00 per acre, aggregating $862,587.00, and the valuation made by the assessors was reduced by the Commissioners, sitting as a Board of Revision and Equalization, to $85.00 per acre, aggregating $586,559.00.

3. The Pittsburgh or River vein of coal belonging to Henry A. Phillips in Wayne Township is located in the south half and the northwest quarter of said township. Many tracts belonging to Henry A. Phillips in this township, as disclosed by the map marked Exhibit B offered in evidence, are held by him in fee and are indicated on the map by solid red coloring. The tracts marked on the map in green and red alternately, belong in part to Henry A. Phillips and the Piedmont Coal Company. Where the whole tract is colored green, it belongs to the Piedmont Coal Company. The acreage assessed to Henry A. Phil- [fol. 624a] lips is made up of four parcels, two of which are assessed in the name of Henry A. Phillips, and one parcel, containing 35.2 acres, is assessed in the name of Charles H. Rush, and another parcel containing 5.5 acres, is assessed to Mrs. Roy M. Smith, it being admitted that both of these tracts belong to and should be assessed to Henry A. Phillips. The total acreage of the coal owned by Henry A. Phillips in the four parcels is 6900.7 acres.

4. The Court adopts the Findings of Fact in paragraphs 3 to 37, inclusive, and the Conclusions of Law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, this day filed, in which facts and law applicable to Wayne Township are found, and makes them and each of them a part of this opinion, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal, bearing in mind in the

case of this appeal, that appellant is an individual instead of a coal company.

5. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusions of law. We have treated these requests as suggestions and they will be filed with this adjudication.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

[fol. 625a] The appeal of Henry A. Phillips from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

IN COURT OF COMMON PLEAS OF GREENE COUNTY

EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed February 10, 1930

And now, to wit, February 8th, 1930, comes Henry A. Phillips, by Kyle and Reinhart and Reed, Smith, Shaw & McClay, his attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in its 5th finding of fact, which reads:

"5. The H. C. Frick Coke Company, operating from an [fol. 626a] opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river."

This finding is wholly inapplicable to this exceptant, as Henry A. Phillips has no connection with H. C. Frick Coke Company.

2. The Court erred in its 6th finding of fact, which reads:

"6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemacolin and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships."

This finding is wholly inapplicable to this exceptant as he owns no coal land in either Morgan or Jefferson Town-
[fol. 627a] ships and has no connection with the railroad mentioned therein.

3. The Court erred in its 12th finding of fact, which reads:

"12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Town-

ship along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad."

for the following reasons:

(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

(b) There is no evidence that the Court was justified in finding that this railroad is owned by the Monongahela Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it.

[fol. 628a] 4. The Court erred in its 13th finding of fact, which reads:

"13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the construction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Brave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company. lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small."

There is nothing in the testimony which would warrant the conclusions drawn by the Court.

5. The Court erred in its 14th finding of fact, which reads:

"14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of

[fol. 629a] the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore."

6. The Court erred in its 15th finding of fact, which reads:

"15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland [fol. 630a] Coal Company substantially belonging to the United States Steel Corporation."

7. The Court erred in its 19th finding of fact, which reads:

"19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county."

8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct competition with the fuel or steam coal shipped to the lake regions.

9. The Court erred in its 24th finding of act, which reads:

"24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County [fol. 631a] or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines."

10. The Court erred in its 25th finding of fact, which reads:

"25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the Boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

The uncontroverted testimony shows Wayne Township to be in the third zone and not in the second zone as the Court has said. There is no evidence to support this finding.

[fol. 632a] 11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past

by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River.

12. The Court erred in so much of its 28th finding of fact which reads:

"* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator."

13. The Court erred in its 29th finding of fact, which reads:

"29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal [fol. 633a] tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships."

14. The Court erred in its 32d finding of fact which reads:

"32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years,

and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed."

15. The Court erred in its 34th finding of fact in so far as it determines the value of exceptant's entire holdings [fol. 634a] in Wayne Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township.

16. The Court erred in its 36th finding of fact, which reads:

"36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time."

17. The Court erred in its 37th finding of fact, which reads:

"37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally."

18. The Court erred in its 4th conclusion of law, which reads:

"4. Notwithstanding the provisions of the law that prop- [fol. 635a] erty must be valued at its real or market value for the purposes of assessment, the Courts of this state have

recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual value, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

19. The Court erred in its 5th conclusion of law, which reads:

"5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations."

20. The Court erred in its 6th conclusion of law, which reads:

"6. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to value and assess the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not [fol. 636a] be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township and so that each owner throughout the County of Greene would be required to bear his, her or its just proportion of the taxes."

21. The Court erred in its 7th conclusion of law, which reads:

"7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

22. The Court erred in its 8th conclusion of law, which reads:

"8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reason-

able care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

23. The Court erred in its 9th conclusion of law, which reads:

"9. The Pittsburgh or River vein of coal underlying [fol. 637a] lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation."

24. The Court erred in its 10th conclusion of law, which reads:

"10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property [fol. 638a] throughout the county, is not relatively higher than other values but is practically uniform, equitable and just."

25. The Court erred in its 11th conclusion of law, which reads:

"11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law."

By the 4th finding of facts in this case, the Court adopts the findings of fact in paragraphs 3 to 37, inclusive, and the conclusions of law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, in which facts and law applicable to Wayne Township are found, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal, bear-[fol. 639a] ing in mind in the case of this appeal that appellant is an individual instead of a coal company, and the foregoing Exceptions refer to the paragraphs in the said findings of fact and conclusions of law in the Cumberland Coal Company, Perry Township, case.

26. The Court erred in its 5th finding of fact (No. 230 June Term, 1928), which reads:

"5. This appeal should be dismissed at the cost of the appellant."

27. The Court erred in entering the following nisi decree:

Nisi Decree

"And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"The appeal of Henry A. Phillips from the decision of the Board of Commissioners of Greene County, sitting as

a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

[fol. 640a] "Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary."

Henry A. Phillips, by Reed, Smith, Shaw & McClay, His Attorneys.

Duly sworn to by Henry A. Phillips. Jurat omitted in printing.

[fol. 641a] We hereby accept service of a copy of the within Exceptions this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

In Court of Common Pleas of Greene County

Opinion and Final Order—Filed May 31, 1930

Twenty-seven exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

In exception number one to the fifth finding of fact, and in exception number two to the sixth finding of fact, the exceptant claims that the facts found are inapplicable to the case of the appellant, Henry A. Phillips. These findings are not intended to operate simply by substituting the name of Henry A. Phillips for the H. C. Frick Coke Company, but the findings certainly have a bearing on the appellant's case since they relate to blocks of coal lands in other townships detailing the advantages in transportation

in the said townships, which are the subject of comparison with the coal lands belonging to Henry A. Phillips in Wayne Township.

[fol. 642a] The fact that the lands of the appellant are in close proximity to a railroad on the south of Perry and Wayne Townships, and that they are near the largest continuous and most valuable block of coal in Greene County, and possibly of bituminous coal in the State of Pennsylvania, some of it partly developed and touching on rail and river transportation at several points, certainly has some bearing on the value of appellant's lands in Wayne Township.

There is just as much evidence in this case in support of the Court's findings with reference to the Scotts Run Railroad (third exception to the twelfth finding) as there is any other railroad testified to by the various witnesses in this inquiry. It is a fair inference, in the absence of testimony to the contrary, that the railroads to Nemacolin, to Greensboro, to Mather and to Waynesburg were standard gauge railroads, engged in the transportation of coal, and there was no detailed testimony with reference to these railroads because counsel on either side assumed that the Court knew the things, which are matters of common knowledge to everybody, with reference to the ability of these railroads to transport coal. The evidence of Mr. McGrew, an expert witness on behalf of the appellee in this case, is that the Scotts Run Railroad, controlled by the Monongahela Railroad, was a railroad of the common type engaged in the transportation of coal and other freight to points in Greene County near Perry Township and Wayne Township. There was no suggestion that it was not a railroad in the [fol. 643a] proper sense of the term, except in the questions asked by the appellant's counsel on cross-examination, and appellant knows that the proximity of the Scotts Run Railroad adds value to their coal in Perry and in Wayne Townships. Surely the appellants did not expect the Court to adopt the assumption of its counsel that the Scotts Run Railroad was not a railroad, in the absence of evidence to support such an assumption.

The purpose of this inquiry was to ascertain the market value of coal lands upon which to base the assessment, and in ascertaining that value, the evidence was presented with the purpose of disclosing actual conditions affecting the

coal in the neighborhood of where the several tracts under consideration were located in comparison with other tracts of coal and conditions surrounding in other localities and throughout the County of Greene. The evidence involved the locality of the coal, the nature and thickness of the vein, the quantity and quality of the coal, and the advantages or difficulties of mining and transportation to market. In the several findings of fact the Court may have incorporated in its findings some names not appearing in the evidence, and some distances which it calculated by scale from the map offered in evidence by the appellant. The railroad routes described by the Court may have been described more fully than the testimony of witnesses would warrant. The location of railroads, township lines and matters of a similar nature were testified to by several witnesses and in addition, the general facts with relation thereto, are matters of [Vol. 644a] common knowledge, of which the Court might almost be said to have judicial cognizance. We do not think any statement of fact with relation to this or other exception is unfair and unjust to the exceptant.

The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant has certain advantages in transportation and future development by rail within his reach which add to the value of the block of coal in Wayne Township belonging to the appellant.

While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the seventh exception is dismissed.

The Board of Revision made an effort to obtain information peculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant seemed to be to furnish such information as was within his power.

The eighth exception to the twenty-first finding of fact ignores the testimony of Mr. McGrew (transcript 213) and of Mr. Baton (transcript 65) as to the value of steam as compared with metallurgical coal.

The ninth exception to the twenty-fourth finding of fact [fol. 645a] as to there being no attempt to value coal in zones other than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township lines. The testimony of experts, based on scientific formulas and theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre Coal Co.'s Assessment, 298 Pa. 294.

The map offered by appellants in connection with evidence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by various exceptions.

The eleventh exception to the twenty-sixth finding may possibly be correct, but is not controlling. The forty years' experience of the Court as to how coal has been priced and sold by description as of a certain township, amounts almost to judicial notice of the custom.

We are not disposed to dispute the qualifications of appellant's engineers, nor reflect on their ability or veracity, nor can we substitute their scientific formulas for evidence of market value, which, if strictly followed, would do away entirely with valuations based on market value and sale prices.

The Court may have made some mistakes in the Findings of Fact but they seem to be of minor importance, not con- [fol. 646a] trolling on the main issues, and after careful examination of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

Final Order

And now, May 1, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of Henry A. Phillips from the decision of the Board of Commissioners

of Greene County, sitting as a Board of Revision and Equilization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed ac-ordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellant excepts to the ruling of the Court on exceptions, and to its entry of the foregoing order, and asks that a bill of exceptions be sealed.

Same day appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 647a] In Court of Common Pleas of Greene County

No. 229, June Term, 1928

In the Matter of the Appeal of the Piedmont Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Wayne Township

Reed, Smith, Shaw & McClay and Kyle & Reinhart, for Appellants.

A. A. Purman, Waychoff & Bradley, for County of Greene.

Appearance Docket Entries

And now, May 29, 1928, Petition and Appeal filed and the following

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due [fol. 648a] consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the Court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

And now, July 14, 1928, Præcipe for Subpœna Duces Tecum filed.

[fol. 649a] Same day Subpœna Duces Tecum issued.

Issue Docket

Trial List, July 23, 1928

And now to-wit, July 23, 1928, Motion to quash subpœna filed and the following

Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open court, in consideration thereof, it is ordered that the subpœna be quashed.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, to-wit, July 23, 1928, an exception to the foregoing order is allowed to the appellee.

A. H. Sayers. (Seal.)

And now, May 6, 1929, requests of appellants for finding of facts and conclusions of law filed.

And now, May 6, 1929, requests of appellees for finding of facts and conclusions of law filed.

And now, January 13, 1930, Findings of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

[fol. 650a] The appeal of the Piedmont Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, exceptions to Findings of Fact and Conclusions of Law filed.

We hereby accept service of a copy of the within exceptions this tenth day of February, A. D. 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

Argument Calendar, March Term, 1930

And now, May 31, 1930, Opinion and Final Order filed.

[fol. 651a] Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of Piedmont Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision

and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellant excepts to the ruling of the Court on exceptions, and to its entry of the foregoing order, and asks that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Supreme Court of Pennsylvania to the Court of Common Pleas of Greene County filed.

And now, June 13, 1930, Bond with Piedmont Coal Company as principal, and United States Fidelity and Guar- [fol. 652a] anty Company, as surety, in the sum of One Thousand ($1,000.00) Dollars filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceeding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

Commonwealth of Pennsylvania,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, wherein In the Matter of the Appeal of the Piedmont Coal Company from the Decision of the Board of Commissioners of Greene County Sitting as a Board of Appeal, for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, so full and entire as the

same remains of record before the said Court, at No. 229 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of July, A. D. 1930.

Morgan Henderson, Prothonotary. (Seal.)

[fol. 653a] In Court of Common Pleas of Greene County

Petition and Appeal—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Piedmont Coal Company respectfully represents:

1. Your petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal land situate in the Township of Wayne, in said County, which was assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as a Board of Appeal for the Revision and Equalization of Assessments, and that said Board on May 4, 1928, over the objection of your petitioner, adjusted the valuation of all the Pittsburgh vein of coal in said township at 85 Dollars per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

[fol. 654a] (a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county

by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation, and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore your petitioner appeals from the action of the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and equitable, having due regard to the valuations and assessments made [fol. 655a] on other real estate in the County of Greene.

And it will ever pray, etc.

Piedmont Coal Company, by Samuel McClay, President.

Duly sworn to by Samuel McClay. Jurat omitted in printing.

EXHIBIT "A"

3,955.5 Acres Pittsburgh Coal.

EXHIBIT "B"

3,955.5 Acres Pittsburgh Coal; Valuation, $336,192.00.

[fol. 656a] In Court of Common Pleas of Greene County

Order Allowing Appeal

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is Further Ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

[fol. 657a] In Court of Common Pleas of Greene County

Findings of Fact, Conclusions of Law and Decree—Filed January 13, 1930

The Piedmont Coal Company, a corporation of Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed its appeal at the above number and term, covering coal lands in Wayne Township, alleging as reasons for the appeal, that:

(a) Said assessors and Commissioners have discriminated against your petitioner in favor of the owners of

other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes [fol. 658a] of real estate in the County of Greene.

The final or adjusted valuation of the Piedmont Coal Company for assessment purposes in Wayne Township was at the rate of $85.00 per acre for 3955.5 acres valued at $336,192.00, a reduction of Forty Dollars per acre on the valuation returned by the township assessor.

At the time this appeal was taken, the Cumberland Coal Company also took a similar appeal at No. 221 June Term, 1928, from the assessment of 9237 acres of Pittsburgh coal in Cumberland Township, valued at $2,401,620.00; at No. 222 June Term, 1928, from the assessment of 38.9 acres of Pittsburgh coal in Carmichaels Borough, valued at $10,114.00; at No. 223 June Term, 1928, from the assessment of 11,956.66 acres of Pittsburgh coal in Greene Township, at a valuation of $2,690,248.00; at No. 224 June Term, 1928, from the assessment of 3126 acres of Pittsburgh coal in Perry Township, at a valuation of $343,860.00; and at No. 225 June Term, 1928, from the assessment of 6012 acres of Pittsburgh coal in Wayne Township, at a valuation of $510,980.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Greene County Coal Company at No. 227 June Term, 1928, from the assessment of 3207 acres of

Pittsburgh coal in Perry Township, at a valuation of $352,770.00; Henry A. Phillips at No. 228 June Term, 1928, [fol. 659a] from the assessment of 566 acres of Pittsburgh coal in Perry Township, at a valuation of $62,260.00; Henry A. Phillips at No. 230 June Term, 1928, from the assessment of 6900.7 acres of Pittsburgh coal in Wayne Township at a valuation of $586,559.00; Greene County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,950.00; Greene Improvement Company at No. 232 June Term, 1928, from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24,565.00; Mary K. Mapel et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1928, from the assessment of 138 acres of Pittsburgh coal in Wayne Township, at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,185.00.

At the trial of the appeals, on motion of counsel for the appellants and over objection of the appellees, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; and further that the Court apply all of the evidence taken in the appeals so joined whenever the same may be [fol. 660a] relevant and material and make separate decrees in each case in accordance therewith." (Transcript 1, page 10.)

A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals above listed. From the evidence in this case, the Court finds the following facts:

1. Piedmont Coal Company is a corporation of Pennsylvania, having its principal office in the City of Pittsburgh, Pennsylvania.

2. Piedmont Coal Company owns in fee 3955.2 acres of Pittsburgh or River vein of coal in Wayne Township,

Greene County, Pennsylvania, which was assessed by the assessors in that township for the triennial assessment of 1928, at $125.00 per acre, aggregating $494,400.00, and the valuation made by the assessors was reduced by the Commissioners, sitting as a Board of Revision and Equalization, to $85.00 per acre, aggregating $336,192.00.

3. The Pittsburgh or River vein of coal belonging to the Piedmont Coal Company in Wayne Township, is located in the south half and the northwest quarter of said township. Many tracts belonging to the Piedmont Coal Company in this township, as disclosed by the map marked Exhibit B, are held by it in severalty and are indicated on the map by solid green coloring. The tracts marked on the map in green and red alternately, belong in part to Henry A. Phillips and the Piedmont Coal Company. Where the whole tract is colored red, it belongs to the Piedmont Coal Company.

[fol. 661a] 4. The Court adopts the Findings of Fact in paragraphs 3 to 37, inclusive, and the Conclusions of Law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Townsnip, at No. 224 June Term, 1928, this day filed, in which facts and law applicable to Wayne Township are found, and makes them and each of them a part of this opinion, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal.

5. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusions of law. We have treated these requests as suggestions and they will be filed with this adjudication.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Piedmont Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assess-

ments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, [fol. 662a] said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

In Court of Common Pleas of Greene County

Exceptions to Findings of Fact and Conclusions of Law—Filed February 10, 1930

And now, to wit, February 8th, 1930, comes Piedmont Coal Company, by Kyle and Reinhart and Reed, Smith, Shaw & McClay, its attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in its 5th finding of fact, which reads:

"5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns [fol. 663a] a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river."

This finding is wholly inapplicable to this exceptant, as the Piedmont Coal Company has no connection with the H. C. Frick Coke Company.

2. The Court erred in its 6th finding of fact, which reads:

"6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monogahela River to a point beyond the works of the Buckeye Coal Company at Nemacolin and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships."

This finding is wholly inapplicable to this exceptant as it owns no coal land in either Morgan or Jefferson Townships and has no connection with the railroad mentioned therein.

3. The Court erred in its 12th finding of fact, which reads:

"12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated [fol. 664a] by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad."

for the following reasons:

(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

(b) There is no evidence that the Court was justified in finding that this railroad is owned by the Monongahela Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it.

4. The Court erred in its 13th finding of fact, which reads:

"13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the con- [fol. 665a] struction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Brave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small."

There is nothing in the testimony which would warrant the conclusions drawn by the Court.

5. The Court erred in its 14th finding of fact, which reads:

"14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore."

[fol. 666a] 6. The Court erred in its 15th finding of fact, which reads:

"15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great

added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the bases of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation."

7. The Court erred in its 19th finding of fact, which reads:

"19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the [fol. 667a] actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate through the county."

8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct competition with the fuel or steam coal shipped to the lake regions.

9. The Court erred in its 24th finding of fact, which reads:

"24. The territoiral limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for val-

uation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines."

10. The Court erred in its 25th finding of fact, which reads:

[fol. 668a] "25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the borough included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

The uncontroverted testimony shows Wayne Township to be in the third zone and not in the second zone as the Court has said. There is no evidence to support this finding.

11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River.

[fol. 669a] 12. The Court erred in so much of its 28th finding of fact, which reads:

"* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated,

the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator."

13. The Court erred in its 29th finding of fact, which reads:

"29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships."

[fol. 670a] 14. The Court erred in its 32d finding of fact, which reads:

"32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed."

15. The Court erred in its 34th finding of fact in so far as it determines the value of exceptant's entire holdings

in Wayne Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township.

16. The Court erred in its 36th finding of fact, which reads:

"36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this [fol. 671a] triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time."

17. The Court erred in its 37th finding of fact, which reads:

"37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally."

18. The Court erred in its 4th conclusion of law, which reads:

"4. Nothwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Re- [fol. 672a] vision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

19. The Court erred in its 5th conclusion of law, which reads:

"5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations."

20. The Court erred in its 6th conclusion of law, which reads:

"6. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to value and assess the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township and so that each owner throughout the County of Greene would be required to bear his, her or its just proportion of the taxes."

21. The Court erred in its 7th conclusion of law, which reads:

"7. The Commissioners have not imposed upon appel- [fol. 673a] lant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

22. The Court erred in its 8th conclusion of law, which reads:

"8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

23. The Court erred in its 9th conclusion of law, which reads:

"9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of [fol. 674a] taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation."

24. The Court erred in its 10th conclusion of law, which reads:

"10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just."

25. The Court erred in its 11th conclusion of law, which reads:

"11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as ex-[fol. 675a] pressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene

County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law."

By the 4th findings of fact in this case, the Court adopts the findings of fact in paragraphs 3 to 37, inclusive, and the conclusions of law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, in which facts and law applicable to Wayne Township are found, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal, and the foregoing Exceptions refer to the paragraphs in the said findings of fact and conclusions of law in the Cumberland Coal Company, Perry Township, case.

26. The Court erred in its 5th finding of fact, which reads:

"5. This appeal should be dismissed at the cost of the appellant."

[fol. 676a] 27. The Court erred in entering the following nisi decree:

"Nisi Decree

"And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"The appeal of the Piedmont Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

"Ordered, adjudged and decreed accordingly.
By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary."

Piedmont Coal Company, by Samuel McClay, President. Reed, Smith, Shaw & McClay, Its Attorneys.

[fol. 677a] *Duly sworn to by Samuel McClay. Jurat omitted in printing.*

We hereby accept service of a copy of the within Exceptions this tenth day of February, A. D. 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

[fol. 678a] In Court of Common Pleas of Greene County

Opinion and Final Order—Filed May 31, 1930

Twenty-seven exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

In exception number one to the fifth finding of fact, and in exception number two to the sixth finding of fact, the exceptants claim that the facts found are inapplicable to the case of the appellant, Piedmont Coal Company. These findings are not intended to operate simply by substituting the name of the Piedmont Coal Company for the H. C. Frick Coke Company, but the findings certainly have a bearing on the appellant's case since they relate to blocks of coal lands in other townships detailing the advantages in transportation in the said townships, which are the subject of comparison with the coal lands belonging to Piedmont Coal Company in Wayne Township.

The fact that the lands of the appellant are in close proximity to a railroad on the south of Perry and Wayne Townships, and that they are near the largest continuous and most valuable block of coal in Greene County, and possibly of bituminous coal in the State of Pennsylvania, some of it partly developed and touching on rail and river transportation at several points, certainly has some bearing on the value of appellant's lands in Wayne Township.

[fol. 679a] There is just as much evidence in this case in support of the Court's findings with reference to the Scotts Run Railroad (third exception to the twelfth finding) as there is any other railroad testified to by the various witnesses in this inquiry. It is a fair inference, in the absence of testimony to the contrary, that the railroads to Nemacolin, to Greensboro, to Mather and to Waynesburg were standard gauge railroads, engaged in the transportation of coal, and there was no detailed testimony with reference to these railroads because counsel on either side assumed that the Court knew the things, which are matters of common knowledge to everybody, with reference to the ability of these railroads to transport coal. The evidence of Mr. McGrew, an expert witness on behalf of the appellee in this case, is that the Scotts Run Railroad, controlled by the Monongahela Railroad, was a railroad of the common type engaged in the transportation of coal and other freight to points in Greene County near Perry Township and Wayne Township. There was no suggestion that it was not a railroad in the proper sense of the term, except in the questions asked by the appellant's counsel on cross examination, and appellants know that the proximity of the Scotts Run Railroad adds value to their coal in Perry and in Wayne Townships. Surely the appellants did not expect the Court to adopt the assumption of its counsel that the Scotts Run Railroad was not a railroad, in the absence of evidence to support such an assumption.

The purpose of this inquiry was to ascertain the market [fol. 680a] value of coal lands upon which to base the assessment, and in ascertaining that value, the evidence was presented with the purpose of disclosing actual conditions affecting the coal in the neighborhood of where the several tracts under consideration were located in comparison with other tracts of coal and conditions surrounding in other localities and throughout the County of Greene. The evidence involved the locality of the coal, the nature and thickness of the vein, the quantity and quality of the coal, and the advantages or difficulties of mining and transportation to market. In the several findings of fact the Court may have incorporated in its findings some names not appearing in the evidence, and some distances which it calculated by scale from the map offered in evidence by the appellant.

The railroad routes described by the Court may have been described more fully than the testimony of witnesses would warrant. The location of railroads, township lines and matters of a similar nature were testified to by several witnesses and in addition, the general facts with relation thereto, are matters of common knowledge, of which the Court might almost be said to have judicial cognizance. We do not think any statement of fact with relation to this or other exception is unfair and unjust to the exceptant.

The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant company has certain advantages in transportation and future development by rail within their reach which add to [fol. 681a] the value of the block of coal in Wayne Township belonging to the appellant.

While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the seventh exception is dismissed.

The Board of Revision made an effort to obtain information peculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant company. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant company seemed to be to furnish such information as was within their power.

The eighth exception to the twenty-first finding of fact ignores the testimony of Mr. McGrew (transcript 213) and of Mr. Baton (transcript 65) as to the value of steam as compared with metallurgical coal.

The ninth exception to the twenty-fourth finding of fact as to there being no attempt to value coal in zones other than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township lines. The testimony [fol. 682a] of experts, based on scientific formulas and

theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre Coal Co.'s Assessment, 298 Pa. 294.

The map offered by appellants in connection with evidence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by various exceptions.

The eleventh exception to the twenty-sixth finding may possibly be correct, but is not controlling. The forty years' experience of the Court as to how coal has been priced and sold by description as of a certain township, amounts almost to judicial notice of the custom.

We are not disposed to dispute the qualifications of appellant's engineers, nor reflect on their ability or veracity, nor can we substitute their scientific formulas for evidence of market value, which, if strictly followed, would do away entirely with valuations based on market value and sale prices.

The Court may have made some mistakes in the Findings of Fact but they seem to be of minor importance, not controlling on the main issues, and after careful examination of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

[fol. 683a] Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of Piedmont Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellant excepts to the ruling of the Court on exceptions, and to its entry of the foregoing order, and asks that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 684a] In Court of Common Pleas of Greene County

No. 227, June Term, 1928

In the Matter of the Appeal of the Greene County Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Perry Township

Reed, Smith, Shaw & McClay and Kyle & Reinhart, for Appellants.

A. A. Purman, Waychoff & Bradley, for County of Greene.

Appearance Docket Entries

And now, May 29, 1928, Petition and Appeal filed and following

Order

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due [fol. 685a] consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is further ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest: Russell I. Lemley, Clerk.

And now, July 16, 1928, Præcipe for Subpœna Duces Tecum filed.

[fol. 686a] Same day Subpœna Duces Tecum issued.

Issue Docket

Trial List, July 23, 1928

And now, July 23, 1928, Petition to quash subpœna filed and the following

Order

And now, to-wit, July 23, 1928, the foregoing petition having been presented in open court, after argument and in consideration thereof, it is ordered that the subpœna be quashed.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, to-wit, July 23, 1928, an exception to the foregoing order is allowed to appellee.

A. H. Sayers. (Seal.)

And now, May 6, 1929, requests of appellants for finding of facts and conclusions of law filed.

And now, May 6, 1929, requests of appellees for finding of facts and conclusions of law filed.

And now, January 13, 1930, Findings of Facts and Decree filed.

Nisi Decree

And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

[fol. 687a] The appeal of the Greene County Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

And now, February 10, 1930, Exceptions to Findings of Fact and Conclusions of Law filed.

We hereby accept service of a copy of the within exceptions this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

Argument Calendar, March Term, 1930

And now, May 31, 1930, Opinion and Final Order filed.

[fol. 688a] Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Greene County Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.
A. H. Sayers. (Seal.)

And now, June 13, 1930, Certiorari from the Supreme Court of Pennsylvania to the Court of Common Pleas of Greene County, filed.

And now, June 13, 1930, Bond with Greene County Coal Company, as principal, and United States Fidelity and [fol. 689a] Guaranty Company, as surety, in the sum of One Thousand ($1000.00) Dollars, filed.

And now, July 14, 1930, Certificate of value filed, and the following:

I do hereby certify that the amount really in controversy in the above entitled proceeding exceeds the sum of twenty-five hundred dollars, exclusive of costs.

A. H. Sayers.

Commonwealth of Pennsylvania,
County of Greene, ss:

I, Morgan Henderson, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the case therein stated, where In the Matter of the Appeal of the Greene County Coal Company from the Decision of the Board of Commissioners of Greene County Sitting as a Board of Appeal, for the Revision and Equalization of Assessments of Property in Said County, for the Triennial Assessment for the Year 1928, so full and entire as the same remains of record before the said Court, at No. 227 of June Term, A. D. 1928.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of July, A. D. 1930.

Morgan Henderson, Prothonotary. (Seal.)

[fol. 690a] In Court of Common Pleas of Greene County
Petition and Appeal—Filed May 29, 1928

To the Honorable A. H. Sayers, President Judge of said Court:

The petition of Greene County Coal Company respectfully represents:

1. Your petitioner is a corporation organized under the laws of the Commonwealth of Pennsylvania.

2. Your petitioner is the owner of certain coal land situate in the Township of Perry in said County, which was assessed by the Assessor of said Township in the Fall of 1927 and returned to the Commissioners of said County, which coal as so assessed is shown in Exhibit "A" hereto attached and made a part hereof.

3. Your petitioner duly appealed from the action of the said Assessor to the Board of Commissioners sitting as a Board of Appeal for the Revision and Equalization of Assessments, and that said Board on May 4, 1928, over the objection of your Petitioner, adjusted the valuation of all the Pittsburgh vein of coal in said township at 110 Dollars per acre, which said valuation applied to your petitioner's said property as appears in the transcript of assessments in the commissioners' office as shown by Exhibit "B" hereto attached and made a part hereof.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discrimi- [fol. 691a] nated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene.

Wherefore your petitioner appeals from the action of the said County Commissioners or Board of Revision and Appeal in making said assessments and valuations, and prays the Court to hear said appeal and proper proofs in support of the averments contained in this petition, and that Your Honor may make such order and decree touching the matters contained in this petition, as may be just and equitable, having due regard to the valuations and assess-
[fol. 692a] ments made on other real estate in the county of Greene.

And it will ever pray, etc.

Greene County Coal Company, by F. B. Farren, Secretary.

Duly sworn to by F. B. Farren. Jurat omitted in printing.

EXHIBIT "A"

3,207 Acres Pittsburgh Coal.

EXHIBIT "B"

3,207 Acres Pittsburgh Coal; Valuation, $352,770.00.

[fol. 693a] IN COURT OF COMMON PLEAS OF GREENE COUNTY

ORDER ALLOWING APPEAL

And now, May 29, 1928, the within petition and appeal having been presented and read in open court, upon due consideration, it is ordered and decreed that the petition be filed and that the appeal be and it hereby is allowed, and that it be docketed in the Prothonotary's Office as other actions in the said court.

It is fu-ther ordered that notice of this appeal be given to the County Commissioners of Greene County and that a hearing thereon be had at as early a date as possible, to

be agreed upon by the parties or fixed by the court upon the application of any party.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Notice of the within petition is hereby accepted this 29th day of May, 1928.

J. N. Scott, M. P. Headley, Paul Debolt, County Commissioners of Greene County.

Attest Russell I. Lemley, Clerk.

[fol. 694a] In Court of Common Pleas of Greene County

Findings of Fact, Conclusion of Law, and Decree—Filed January 20, 1930

The Greene County Coal Company, a corporation of Pennsylvania, being aggrieved by the decision of the Commissioners of Greene County, Pennsylvania, sitting as a Board of Appeal for the revision and equalization of the triennial assessment of property in Greene County for the year 1928, filed its appeal at the above number and term, covering coal lands in Perry Township, alleging as reasons for the appeal, that:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township at the same valuation, regardless of the remoteness or accessibility of the said coal to market,

cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of [fol. 695a] real estate in the County of Greene.

The final or adjusted valuation of the Greene County Coal Company for assessment purposes in Perry Township was at the rate of $110.00 per acre for 3207 acres valued at $352,770.00, a reduction of Fifteen Dollars per acre on the valuation returned by the township assessor.

At the time this appeal was taken, the Cumberland Coal Company also took a similar appeal at No. 221 June Term, 1928, from the assessment of 9237 acres of Pittsburgh coal in Cumberland Township, valued at $2,401,620.00; at No. 222 June Term, 1928, from the assessment of 38.9 acres of Pittsburgh coal in Carmichaels Borough, valued at $10,-114.00; at No. 223 June Term, 1928 from the assessment of 11,956.66 acres of Pittsburgh coal in Greene Township at a valuation of $2,690,248.00; at No. 224 June Term, 1928, from the assessment of 3126 acres of Pittsburgh coal in Perry Township, at a valuation of $343,860.00; and at No. 225 June Term, 1928, from the assessment of 6012 acres of Pittsburgh coal in Wayne Township at a valuation of $510,-980.00.

Similar appeals were filed by the H. C. Frick Coke Company, at No. 226 June Term, 1928, from the decision of the Board of Revision, assessing 302 acres of Pittsburgh coal belonging to said company in Greene Township, at a valuation of $67,950.00; Henry A. Phillips at No. 228 June Term, 1928, from the assessment of 566 acres of Pittsburgh Coal in Perry Township, at a valuation of $62,260.00; Piedmont Coal Company at No. 229 June Term, 1928, from [fol. 696a] the assessment of 3955.5 acres of Pittsburgh coal in Wayne Township at a valuation of $336,192.00; Henry A. Phillips at No. 230 June Term, 1928, from the assessment of 6900.7 acres of Pittsburgh coal in Wayne Township at a valuation of $586,559.00; Green County Coal Company at No. 231 June Term, 1928, from the assessment of 270 acres of Pittsburgh coal in Wayne Township at a valuation of $22,950.00; Green Improvement Company at No. 232 June Term, 1928, from the assessment of 289 acres of Pittsburgh coal in Wayne Township at a valuation of $24, 565.00; Mary

K. Mapel, et al. at No. 7 September Term, 1928, from the assessment of 357.47 acres of Pittsburgh coal in Wayne Township at a valuation of $30,384.00; W. A. Seifert at No. 8 September Term, 1928, from the assessment of 138 acres of Pittsburgh Coal in Wayne Township, at a valuation of $11,730.00; and William J. Kyle, Trustee, at No. 9 September Term, 1928, from the assessment of 261 acres of Pittsburgh coal in Wayne Township, at a valuation of $22,185.00.

At the trial of the appeals, on motion of counsel for the appellants and over the objection of the appellees, the Court granted a motion whereby these appeals were "joined for the purpose of trial only, and that they should be heard together by the Court, but that each appeal retained its separate character and required the entry of a separate decree; and further that the Court apply all of the evidence taken in the appeals so joined whenever the same may be relevant and material and make separate decrees in each case in accordance therewith." (Transcript 1, page 10.)

[fol. 697a] A great deal of evidence was taken and all of it, with a few minor exceptions, is applicable to each of the appeals above listed. From the evidence in this case, the Court finds the following facts:

1. Greene County Coal Company is a corporation of Pennsylvania, having its principal office in the City of Pittsburgh, Pennsylvania.

2. Greene County Coal Company owns in fee 3207 acres of Pittsburgh or River vein of coal in Perry Township, Greene County, Pennsylvania, which was assessed by the Assessors in that township for the triennial assessment of 1928, at $125.00 per acre, aggregating $400,875.00, and the valuation made by the assessors was reduced by the Commissioners, sitting as a Board of Revision and Equalization, to $85.00 per acre, aggregating $352,770.00.

3. The Court adopts the Findings of Fact in paragraphs 3 to 37, inclusive, and the Conclusions of Law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, this day filed, and makes them and each of them a part of this opinion, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal.

4. This appeal should be dismissed at the cost of the appellant.

The parties have drawn lengthy and full requests for findings of fact and conclusion of law. We have treated these requests as suggestions and they will be filed with this adjudication.

[fol. 698a] Nisi Decree

And now, January 13th, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

The appeal of the Green County Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

[fol. 699a] In Court of Common Pleas of Greene County

Exceptions to Findings of Fact and Conclusions of Law —Filed February 10, 1930

And now, to wit, February 8th, 1930, comes Greene County Coal Company, by Kyle and Reinhart and Reed, Smith, Shaw & McClay, its attorneys, and files the following exceptions to the findings of fact, conclusions of law and nisi decree of the Court entered January 13, 1930, which exceptions are as follows:

1. The Court erred in its 5th finding of fact, which reads:

"5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson

Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river."

This finding is wholly inapplicable to this exceptant as Greene County Coal Company has no connection with the H. C. Frick Coke Company.

[fol. 700a] 2. The Court erred in its 6th finding of fact which reads:

"6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships."

This finding is wholly inapplicable to this exceptant as it owns no coal land in either Morgan or Jefferson Townships and has no connection with the railroad mentioned therein.

3. The Court erred in its 12th finding of fact which reads:

"12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating [fol. 701a] railroad that hauls coal and freight which is

delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad."

for the following reasons:

(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

(b) There is no evidence that the Court was justified in finding that this railroad is owned by the Monongahela Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it.

4. The Court erred in its 13th finding of fact, which reads:

"13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the construction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Brave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at [fol. 702a] present constructed, and the cost of reaching the railroad with a great part of this coal would be very small."

There is nothing in the testimony which would warrant the conclusions drawn by the Court.

5. The Court erred in its 14th finding of fact, which reads:

"14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their

assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships, of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore."

6. The Court erred in its 15th finding of fact, which reads:

"15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true [fol. 703a] that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation."

7. The Court erred in its 19th finding of fact, which reads:

"19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are

likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements [fol. 704a] necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county."

8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct competition with the fuel or steam coal shipped to the lake regions.

9. The Court erred in its 24th finding of fact, which reads:

"24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines."

10. The Court erred in its 25th finding of fact which reads:

"25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately [fol. 705a] along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill."

11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have

been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River.

12. The Court erred in so much of its 28th finding of fact which reads:

"* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator."

[fol. 706a] 13. The Court erred in its 29th finding of fact, which reads:

"29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracks in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships."

14. The Court erred in its 32d finding of fact which reads:

"32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years,

and that that development will not result in the movement of any coal from Greene Township to the rear end of Cum- [fol. 707a] berland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed."

15. The Court erred in its 33d finding of fact in so far as it determines the value of exceptant's entire holdings in Perry Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township.

16. The Court erred in its 36th finding of fact which reads:

"36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, costs of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time."

[fol. 708a] 17. The court erred in its 37th finding of fact which reads:

"37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally."

18. The Court erred in its 4th conclusion of law which reads:

"4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the

purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third."

19. The Court erred in its 5th conclusion of law, which reads:

"5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the [fol. 709a] proper determination of the valuations."

20. The Court erred in its 6th conclusion of law, which reads:

"6. It was the duty of the Commissioners, acting as a Board of Revision and Equalization, to value and assess the Pittsburgh or River vein of coal throughout the entire County of Greene so that the burden of taxation would not be unnecessarily cast upon the owners of the Pittsburgh or River vein of coal in any particular township and so that each owner throughout the County of Greene would be required to bear his, her or its just proportion of the taxes."

21. The Court erred in its 7th conclusion of law, which reads:

"7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

22. The Court erred in its 8th conclusion of law, which reads:

"8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have [fol. 710a] taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed."

23. The Court erred in its 9th conclusion of law, which reads:

"9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation."

24. The Court erred in its 10th conclusion of law, which reads:

[fol. 711a] "10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellants property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just."

25. The Court erred in its 11th conclusion of law, which reads:

"11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law."

[fol. 712a] By the 3d findings of fact in this case, the Court adopts the findings of fact in paragraphs 3 to 37, inclusive, and the conclusions of law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal, and the foregoing Exceptions refer to the paragraphs in the said findings of fact and conclusions of law in the Cumberland Coal Company, Perry Township, case.

26. The Court erred in its 4th finding of fact (No. 227 June Term, 1928), which reads:

"4. This appeal should be dismissed at the cost of the appellant."

27. The Court erred in entering the following nisi decree:

"Nisi Decree

"And now, January 13th, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"The appeal of the Greene County Coal Company from the decision of the Board of Commissioners of Greene County sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at

the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty [fol. 713a] days, said decree shall be entered as a final decree.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary."

Greene County Coal Company, by Reed, Smith, Shaw & McClay, Its Attorneys.

Duly sworn to by F. B. Farren. Jurat omitted in printing.

[fol. 714a] We hereby accept service of a copy of the within Exceptions this tenth day of February, 1930.

Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for County Commissioners.

In Court of Common Pleas of Greene County

Opinion and Final Order—Filed May 31, 1930

Twenty-seven exceptions have been taken by appellant to the Findings of Fact and Conclusions of Law filed by the Court in this matter. The Court is of opinion that the Findings of Fact are supported by the evidence.

In exception number one to the fifth finding of fact, and in exception number two to the sixth finding of fact, the exceptants claim that the facts found are inapplicable to the case of the appellant, the Greene County Coal Company. These findings are not intended to operate simply by substituting the name of the Greene County Coal Company for the H. C. Frick Coke Company, but the findings certainly have a bearing on the appellant's case since it relates to blocks of coal lands in adjoining townships, detailing the advantages in transportation in the said townships, which are the subject of comparison with the coal lands belonging to the Greene County Coal Company in Perry Township.

The fact that the lands of the appellant are in close [fol. 715a] proximity to a railroad on the south of Perry and Wayne Townships, and that they adjoin the largest continuous and most valuable block of coal in Greene County, and possibly of bituminous coal in the State of Pennsylvania, some of it partly developed and touching on rail and river transportatoin at several points, certainly has some bearing on the value of appellant's lands in Perry Township.

There is just as much evidence in this case in support of the Court's findings with reference to the Scotts Run Railroad (third exception to the twelfth finding) as there is any other railroad testified to by the various witnesses in this inquiry. It is a fair inference, in the absence of testimony to the contrary, that the railroads to Nemacolin to Greensboro, to Mather and to Waynesburg were standard gauge railroads, engaged in the transportation of coal, and there was no detailed testimony with reference to these railroads because counsel on either side assumed that the Court knew the things which are matters of common knowledge to everybody with reference to the ability of these railroads to transport coal. The evidence of Mr. McGrew, an expert witness sworn by the county in this case, is that the Scotts Run Railroad, controlled by the Monongahela Railroad, was a railroad of the common type engaged in the transportation of coal and other freight to points in Greene County near Perry Township and Wayne Township. There was no suggestion that it was not a railroad in the proper sence of the term, except in the questions asked by the ap- [fol. 716a] pellant's counsel on cross examination, and appellants know that the proximity of the Scotts Run Railroad adds value to their coal in Perry and in Wayne Townships. Surely the appellants did not expect the Court to adopt the assumption of its counsel that the Scotts Run Railroad was not a railroad, in the absence of evidence to support such an assumption.

The purpose of this inquiry was to ascertain the market value of coal lands upon which to base the assessment, and in ascertaining that value the evidence was presented with the purpose of disclosing actual conditions affecting the coal in the neighborhood of where the several tracts under consideration were located in comparison with other tracts of

coal and conditions surrounding in other localities and throughout the County of Greene. The evidence involved the locality of the coal, the nature and thickness of the vein, the quantity and quality of the coal, and the advantages or difficulties of mining and transportation to market. In the several findings of fact the Court may have incorporated in its findings some names not appearing in the evidence, and some distances which it calculated by scale from the map offered in evidence by the appellant. The railroad routes described by the Court may have been possibly described more fully than the testimony of witnesses would warrant. The location of railroads, township lines and matters of a similar nature were testified to by several witnesses and in addition, the general facts with relation thereto, are matters of common knowledge, of which the [fol. 717a] Court might almost be said to have judicial cognizance. We do not think any statement of fact with relation to this or other exception is unfair and unjust to the exceptant.

The Court has not attempted to say how the coal lands shall be developed, but has pointed out that the appellant company has certain advantages in transportation and future development by rail within their control which add to the value of the block of coal in Perry Township belonging to appellant.

While the testimony of the county commissioners in some instances was indefinite and possibly contradictory, the Court feels that there was ample evidence to show that they tried to arrive at the facts upon which to base the market value of the coal lands, and for this reason the seventh exception is dismissed.

The Board of Revision made an effort to obtain information peculiarly in the possession of the appellants, such as books, papers and financial statements showing valuations placed on the coal by the appellant company. The Board of Revision seemed to be much more willing to inform themselves of the necessary facts than the appellant company seemed to be to furnish such information as was within their power.

The eighth exception to the twenty-first finding of fact ignores the testimony of Mr. McGrew (transcript 213) and

of Mr. Baton (transcript 65) as to the value of steam as compared with metallurgical coal.

The ninth exception to the twenty-fourth finding of fact [fol. 718a] as to there being no attempt to value coal in zones other than by township lines in Pennsylvania, is refuted by the evidence of appellant's experts Mr. Rayburn (transcript 117) and by Mr. Baton (transcript 61) to the effect that they did not know of coal anywhere being assessed in zones as suggested by them, or of such zones being established in any county other than by township lines. The testimony of experts, based on scientific formulas and theories as to zoning and valuation, is not controlling. Lehigh & Wilkes-Barre Coal Co's. Assessment, 298 Pa. 294.

The map offered by appellants in connection with evidence showing the distance of the various townships from rail and river transportation, and actual coal operations and developments, furnishes the facts found by the Court to which objection is taken by various exceptions.

The eleventh exception to the twenty-sixth finding may possibly be correct, but is not controlling. The forty years' experience of the Court as to how coal has been priced and sold by description as of a certain township, amounts almost to judicial notice of the custom.

We are not disposed to dispute the qualifications of appellant's engineers, nor reflect on their ability or veracity, nor can we substitute their scientific formulas for evidence of market value, which, if strictly followed, would do away entirely with valuations based on market value and sale prices.

The Court may have made some mistakes in the Findings of Fact but they seem to be of minor importance, not [fol. 719a] controlling on the main issues, and after careful examination of the exceptions, we are still of the opinion that the essential facts have been correctly found by the Court on proper evidence, and that the legal conclusions of the Court are in the main correct.

Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court the exceptions are dismissed, and it

is ordered, adjudged and decreed that the appeal of the Greene County Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.

Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 720a] In Supreme Court of Pennsylvania, Western District

No. 152, March Term, 1930

In the Matter of the Appeal of Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the year 1928, Cumberland Township

Appeal of Cumberland Coal Company from the Judgment of the Court of Common Pleas of Greene County at No. 221, June Term, 1928

[fol. 721a] No. 154, March Term, 1930

In the Matter of the Appeal of The Cumberland Coal Company from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Greene Township

Appeal of Cumberland Coal Company from the Judgment of the Court of Common Pleas of Greene County, at No. 223, June Term, 1928

No. 155, March Term, 1930

In the Matter of the Appeal of THE CUMBERLAND COAL COMPANY from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Perry Township

Appeal of Cumberland Coal Company from the Judgment of the Court of Common Pleas of Greene County, at No. 224, June Term, 1928

[fol. 722a] No. 156, March Term, 1930

In the Matter of the Appeal of THE CUMBERLAND COAL COMPANY from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Wayne Township

Appeal of Cumberland Coal Company from the Judgment of the Court of Common Pleas of Greene County, at No. 225, June Term, 1928

No. 159, March Term, 1930

In the Matter of the Appeal of HENRY A. PHILLIPS from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Wayne Township

Appeal of Henry A. Phillips from the Judgment of the Court of Common Pleas of Greene County, at No. 230, June Term, 1928

[fol. 723a] No. 160, March Term, 1930

In the Matter of the Appeal of THE PIEDMONT COAL COMPANY from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Wayne Township

Appeal of Piedmont Coal Company from the Judgment of the Court of Common Pleas of Greene County, at No. 229, June Term, 1928

No. 161, March Term, 1930

In the Matter of the Appeal of THE GREENE COUNTY COAL COMPANY from the Decision of the Board of Commissioners of Greene County, Sitting as a Board of Appeal for the Revision and Equalization of Assessments of Property in said County, from the Triennial Assessment for the Year 1928, Perry Township

Appeal of Greene County Coal Company from the Judgment of the Court of Common Pleas of Greene County, at No. 227, June Term, 1928

STIPULATION RE TRANSCRIPT OF RECORD

[fol. 724a] Whereas, all of the cases above styled at the hearing of same in the Court of Common Pleas of Greene County, upon motion of appellants to which the attorneys for appellees agreed, were combined by the Court for the purpose of trial only, all of the evidence introduced to be considered by the Court in any and all cases where the same might be applicable, but separate findings and decree to be rendered in each case, and

Whereas, all of the said cases were heard together, and the said Court, considering the testimony wherever the same appeared to be applicable, has made separate findings of fact, conclusions of law and final decrees in each of the above cases, dismissing the appeals, from which final decrees the appellants in each of the cases above named have appealed to this Court, and

Whereas, it is not possible to separate the lengthy testimony taken at the hearing so as to print in separate Records the parts of it applicable to each of the said cases, and it would be expensive and burdensome to print all of the said testimony in each of the said Appeals, and

Whereas, the questions raised and to be raised in the said Appeals are of a similar nature in each of the above cases, and the argument upon the said questions can well be combined in one Brief;

Now, therefore, it is agreed and stipulated by and between Reed, Smith, Shaw & McClay and Kyle & Reinhart, attorneys for all of the appellants above named on the one part, and Ambrose Bradley, A. A. Purman and Challen W. Waychoff, attorneys for the appellees on the other part, that the said Appeals shall all be presented to the [fol. 725a] Supreme Court in one Brief and one Record which shall apply to all of the said Appeals; that the said Brief and Record shall contain the style of each of the said cases with the number and term of each, but that the Statement of the Questions Involved, the History of the Case, the Assignments of Error and the Argument for Appellants in Appellant's Brief, shall apply to all of the said cases, and that the Appellees shall likewise print but one Brief which shall apply to all of said cases. And it is further agreed and stipulated that but one Record shall be printed which shall contain the relevant Docket Entries, the Pleadings or papers in the nature thereof, the Findings of Fact, Conclusions of Law and Decree Nisi filed by the Court in each of said cases, together with the Exceptions filed by the appellants, the Rulings thereon and Final Decree in each case, but the Testimony taken at the said hearing, together with all of the Exhibits, shall be printed but once.

Agreed and stipulated this 23rd day of July, A. D. 1930.

Reed, Smith, Shaw & McClay, Kyle & Reinhart, Attorneys for Appellants. Ambrose Bradley, A. A. Purman, Challen W. Waychoff, Attorneys for Appellee.

[fol. 1b] In Supreme Court of Pennsylvania, Western District

[Title omitted]

[fol. 2b] Docket Entries

June 12, 1930.—Appeal and affidavit filed and Writ exit.
June 17, 1930.—Appearance for appellee filed.
August 13, 1930.—Assignments of error filed.
August 21, 1930.—Record filed.
October 6, 1930.—Argued.

Decision

Nov. 24, 1930.—The decree of the court below is affirmed at the cost of appellant.

Schaffer, J.

[fol. 3b] December 2, 1930.—Petition for reargument filed.

Order

December 8, 1930.—Reargument refused. Per Curiam.

Order

And now, to wit, Dec. 9th, 1930, it is ordered that the Prothonotary of this Court, for the Western District thereof, hold the record in the above entitled case for ten days from this date, within which time the appellant herein may make application for an appeal or certiorari to the Supreme Court of the United States.

Robt. S. Frazer, Chief Justice of the Supreme Court of Pennsylvania.

Order

And now, this 16th day of December, 1930, it is ordered that the Prothonotary of this Court, for the Western District thereof, hold the records in the above entitled cases for a further period of sixty days (60) from the date of this order, within which time the appellants herein may make

application to the Supreme Court of the United States for appeal or writs of certiorari.

Robt. S. Frazer, Chief Justice of the Supreme Court of Pennsylvania.

[fol. 4b] December 16, 1930.—Petition by appellant for amendment of order of December 8/30 filed.

Order

And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows:

Upon consideration of the petition for re-argument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused.

Per Curiam.

Dec. 23/30.—Præcipe by Appellant for preparation of certified transcript for Supreme Court of United States filed.

[fol. 5b] In Supreme Court of Pennsylvania

No. 152, March Term, 1930

Appeal of Cumberland Coal Company, in Cumberland Township, from Decree at No. 221, June Term, 1928

Assignments of Error

And now, to wit August 11, 1930, comes the appellant, Cumberland Coal Company, by it attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sit-ing as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Cumberland at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail trans-

portation and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township and the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of 9 or 10 miles.

Second. The Trial Court erred in approving the action of the township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone a deduction in the assessment of 6% of the acreage where they allow such deduction to the person or [fol. 6b] corporation owning both coal and surface or surface alone.

Third. The Trial Court erred in dismissing appellant's 10th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

10th Exception and Finding Involved Therein (Record, p. 456a)

"10. The Court erred in its 36th finding of fact, which reads:

" '36. The suggestion by the engineers and experts testifying on behalf of appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zones under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on townships lines under the system now followed.'

[fol. 7b] for the following reasons:

"(a) The experts are men of practical knowledge, have constructed most of the plants in Greene County and have

kept in touch with what the various owners of coal in that county are doing and their purposes.

"(b) The testimony of the experts is clear and explicit and there is not a syllable in the case which either contradicts or throws doubt upon their veracity or the soundness of the opinions expressed by them."

Ruling of the Court thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourth. The Trial Court erred in dismissing appellant's 12th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

12th Exception (Record, p. 457a)

"12. The Court erred in its 38th finding of fact in not taking into consideration that the sales made, and referred [fol. 8b] to in this finding, were made long prior to 1928 and at a time when the market for virgin coal land was not depreciated and before the slump, and that most of it was purchased under peculiar conditions, as testified to by Mr. Albright and others, and that these isolated sales were not proper evidence of the true, actual or market value of coal in the year in which the assessment was made."

38th Finding (Record, p. 445a)

"38. The only recent sales of coal in this township were to the Cumberland Coal Company, who were the purchasers of a tract in the extreme rear of Cumberland Township in 1921 or 1922, known as the Garard or Long Farm, of

about 200 acres, for the price of $600.00 per acre; the Joseph Moredock tract of 360 acres in Greene Township, behind Cumberland, in 1925, at $600.00 per acre; the Keener tract in the lower edge of Greene Township was purchased in 1925 or 1926 at $650.00 per acre. Another Keener tract one-half mile south and four miles west of the Greene Township tract in Dunkard Township was sold at about the same time for $400.00 per acre. The John Lantz tract of approximately 400 acres in Whiteley and 400 acres in Greene Township, and directly in the rear of Cumberland Township, was purchased by the appellant in 1926 at $400.00 per acre. Five or six sales were made to H. A. [fol. 95] Phillips, an appellant in Perry and Wayne Townships, about 1924, at from $250.00 to $295.00 per acre."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fifth. The Trial Court erred in dismissing appellant's 14th exception to the findings of fact, which exception, finding, decision of the Court thereon, and exception to such decision are as follows:

14th Exception and Finding Involved Therein (Record, p. 458a)

"14. The Court erred in its 40th finding of fact, which reads:

"'40. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with other classes of property and real estate throughout the county generally.'

"This finding is contrary to every fact proved in this case."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due con-
[fol. 10b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Sixth. The Trial Court erred in dismissing appellant's 15th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

15th Exception and Conclusion Involved Therein (Record, p. 459a)

"15. The Court erred in its 4th conclusion of law, which reads:

"'4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, [fol. 11b] this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.'

for the following reasons:

"(a) The Courts have never approved such principle, although where assessments have been made and they were uniform and did not bear unjustly against any owners of

property, they permitted them to stand notwithstanding their disapproval of the practice.

"(b) The finding of the Court shows the whole action of the Commissioners to be illegal, invalid and void in that they recognized and adopted the ratio of 33⅓% of value in the First and Second Wards of the Borough of Waynesburg, Greene County, Pennsylvania, and 50% in every other borough and township in the county."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed. * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 12b] Seventh. The Trial Court erred in dismissing appellant's 16th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon and exception to such decision are as follows:

16th Exception and Conclusion Involved Therein (Record, p. 460a)

"16. The Court erred in its 5th conclusion of law, which reads:

"'The specific complaint of the appellant seems to be that the front coal owned by the Buckeye Coal Company and the Crucible Fuel Company has been unduly favored in the valuation for tax purposes, and as between appellant and these companies, there has been discrimination and a lack of uniformity whereby the appellant would be compelled to pay an unfair and undue proportion of the taxes. Taking into consideration the fact that considerable of the coal of the Buckeye Coal Company is three miles back from the river, and possibly some coal of the Crucible Fuel Com-

pany, the fact that 250 acres, defined as active coal, is assessed to the Crucible Fuel Company and the Buckeye Coal Company at $500.00 per acre, amounting to $125,000 each, and that other buildings, equipment and real estate of each of these companies is assessed to them at a valuation in the one case of $164,435.00, and in the other case at $377,891.00, there is not disclosed any substantial discrimination or lack of uniformity such as would entitle the appellant to a reduction of its assessment values. The appellant's [fol. 13b] property, or coal, having regard to the assessment of active coal and other property assessed to operating properties within the district, is not assessed at any higher rate than the coal property and plants in front of it and along the Monongahela River.'

for the following reasons:

"(a) This is misstatement of our complaint.

"(b) This finding is not supported by any evidence.

"(c) The statements of facts in this conclusion if pertinent or relevant to any issue are sufficient in themselves to show that the conclusion is not warranted and that there is a marked and clear discrimination against the exceptant and an undue proportion of taxes throughout the county has been put upon it."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 14b] Eighth. The Trial Court erred in dismissing appellant's 17th exception to the conclusions of law, which exception, conclusion, and decision of the Court thereon, and exception to such decision are as follows:

17th Exception and Conclusion Involved Therein (Record, p. 461a)

"17. The Court erred in its 6th conclusion of law which reads:

" '6. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River Vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.' "

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Ninth. The Trial Court erred in dismissing appellant's 18th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception [fol. 15b] to such decision are as follows:

18th Exception and Conclusion Involved Therein (Record, p. 461a)

"18. The Court erred in that part of its 7th conclusion of law, which reads:

" '7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township * * * and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust.'

for the following reasons:

"The assessors adopted a rule that where the operating coal companies mined more than 75 acres in the preceding year the assessment upon the 250 acres of coal immediately available for mining should be assessed at $500.00 an acre, yet they assessed the remainder of the coal in the township at $260.00 an acre irrespective of its location, distance from railroads or the river or other means of transportation, and notwithstanding the findings of fact by the Court that the coal lying in the western part of Cumberland Township was not of one-half the value of the coal owned by the operating companies fronting on the river."

[fol. 16b] Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Tenth. The Trial Court erred in dismissing appellant's 19th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

19th Exception and Conclusion Involved Therein (Record, p. 462a)

"19. The Court erred in its 8th conclusion of law, which reads:

" 'The Commissioners have not imposed upon appellant in this case, as owners of coal in Cumberland Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River Vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.' "

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due con- [fol. 17b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Eleventh. The Trial Court erred in dismissing appellant's 21st exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

21st Exception and Conclusion Involved Therein (Record, p. 463a)

"21. The Court erred in its 10th conclusion of law which reads:

" '10. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.' "

[fol. 18b] Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twelfth. The Trial Court erred in dismissing appellant's 22d exception to the conclusions of law, which exception,

conclusion, the decision of the Court thereon, and exception to such decision are as follows:

22d Exception and Conclusion Involved Therein (Record, p. 463a)

"22. The Court erred in its 11th conclusion of law, which reads:

" '11. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. [fol. 19b] While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent of their total acreage as exempt from taxation.'

for the following reasons:

"(a) There is not and has not been for over one hundred years any such distinction as the Court says.

"(b) There is no warrant or justification for allowing an owner who has title to both surface and coal or surface above, 6% and charging the owners of coal with the full acreage without any deduction, and thus imposing a burden upon them of paying taxes upon six in every hundred acres, from which all the other owners of acreage in Greene County are relieved."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-

clusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

[fol. 20b] Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Thirteenth. The Trial Court erred in dismissing appellant's 23d exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

23d Exception and Conclusion Involved Therein (Record, p. 464a)

"23. The Court erred in its 12th conclusion of law, which reads:

" '12. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellants property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just.' "

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due con-
[fol. 21b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Fourteenth. The Trial Court erred in dismissing appellant's 24th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

24th Exception and Conclusion Involved Therein (Record, p. 465a)

"24. The Court erred in its 13th conclusion of law, which reads:

" 'This appeal should be dismissed at the cost of the appellant.' "

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 22b] Fifteenth. The Trial Court erred in dismissing appellant's 25th exception to the entering of the nisi decree, which exception, nisi decree, the decision of the Court thereon, and exception to such decision are as follows:

25th Exception and Nisi Decree Involved Therein (Record, p. 465a)

"25. The court erred in entering the following nisi decree.

" 'Nisi Decree

" 'And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

" 'The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of

record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

" 'Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.' "

[fol. 23b] Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Sixteenth. The Trial Court erred in dismissing appellant's 2d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

2d Exception and Finding Involved Therein (Record, p. 453a

"2. The Court erred in its 19th finding of fact, which reads:

" '19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are [fol. 24b] likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.'

for the following reasons:

"(a) There is no evidence whatever to support this finding.

"(b) The testimony shows that the County Commissioners did not take these things into consideration, had no knowledge and made no attempt to acquire any but the most general information in respect thereto."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Seventeenth. The Trial Court erred in dismissing appellant's 3d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 25b]

3d Exception and Finding Involved Therein (Record, p. 453a)

"3. The Court erred in that part of its 24th finding of fact, which reads:

"'* * * but the coal in Greene County * * * is not in direct competition with the fuel or steam coal shipped to the Lake Regions.'

"This is contrary to the undisputed testimony which shows that the only reason why it is not in competition is because of the discrimination in freight rates."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Eighteenth. The Trial Court erred in dismissing appellant's 5th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to [fol. 26b] such decision are as follows:

5th Exception and Finding Involved Therein (Record p. 254a)

"5. The Court erred in that part of its 27th finding of fact which reads: '• • • and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, • • • to establish any other zone for tax valuation purposes, than the township lines.'

"There is no evidence which would warrant this finding."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Nineteenth. The Trial Court erred in dismissing appellant's 6th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decisions are as follows:

[fol. 27b] 6th Exception and Finding Involvel Therein (Record, p. 454a)

"6. The Court erred in that part of its 28th finding of fact which reads: 'The natural arrangements of the town-

ships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. * * * The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.'

"This finding is contrary to the proved facts in this case."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 28b] Twentieth. The Trial Court erred in dismissing appellant's 7th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

7th Exception and Finding Involved Therein (Record, p. 455a)

"7. The Court erred in that part of its 29th finding of fact, which reads: 'Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines.'

"There is no evidence whatever to support this finding."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-

clusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-first. The Trial Court erred in dismissing appellant's 8th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 29b]

8th Exception and Finding Involved Therein (Record p. 455a)

"8. The Court erred in that part of the 33d finding of fact, which reads: 'The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal of the Cumberland Coal Company might not be operated for many years, * * * and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Cumberland Township.'
"This finding is in direct contradiction to the positive testimony of witnesses and other findings of the Court."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

[fol. 30b] Twenty-second. The Trial Court erred in dismissing appellant's 9th exception to the findings of fact,

which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

9th Exception (Record, p. 455a)

"9. The Court erred in its 34th finding of fact, wherein it states that the coal being a part of the contiguous block with an opening on the river and railroad in Jefferson Township, Greene County, Pennsylvania, on the north of Cumberland Township and joined by another part of the block extending from the south of Cumberland Township through Monongahela Township to the river, both of which contacts with transportation immediately available give an additional value to the coal at the rear end of Cumberland Township belonging to the appellant.

"There is no evidence in the case which would warrant this conclusion."

34th Finding (Record, p. 443a)

"34. The Commissioners have assessed the Pittsburgh or River vein of coal lying within the territorial limits of Cumberland Township at $260.00 an acre, that coal being a part of the contiguous block with an opening on the river and railroad in Jefferson Township, Greene County, Pennsylvania, on the north of Cumberland Township, and joined by another part of the block extending from the south of Cumberland Township through Monongahela to [fol. 31b] the river, both of which contacts with transportation immediately available gives an additional value to the coal at the rear end of Cumberland Township belonging to the appellants. Monongahela Township fronting on the river was valued at $300.00 per acre; Greene Township, lying three miles west of the Monongahela River, adjoining Cumberland Township on the south, was valued at $225.00 per acre; Whiteley Township, lying west of the land of the appellant in Greene Township and in Cumberland Township, most or all of which is owned by the Cumberland Coal Company, was valued at $90.00 per acre; Jefferson Township, lying north and west of Cumberland Township and having the advantages of transportation both by rail and river, is valued at $250.00 per acre. There is no evidence and no reason to believe that there is any

material difference in the quality, quantity, depth below the surface, or character of the Pittsburgh or River vein of coal in these townships, except the outcrop coal in the southern portion of Monongahela Township, but on the contrary, it is in evidence that that vein of coal throughout these townships is uniform in quality and character, and most of the coal in these townships, except the outcrop in Monongahela Township, ranges in depth from 280 to 500 feet below the surface."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due con-[fol. 32b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-third. The Trial Court erred in dismissing appellant's 11th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

11th Exception (Record, p. 457a)

"11. The Court erred in that part of its 37th finding of fact which states that approximately three-fifths of the Pittsburgh or River vein of coal in Cumberland Township belongs to the appellant and two-fifths to the Buckeye Coal Company.

"According to the Court's other findings three-fourths of the Pittsburgh or River vein of coal in the western half of Cumberland Township belongs to Cumberland Coal Company and one-fourth to Buckeye Coal Company."

37th Finding (Record, p. 444a)

"37. Approximately three-fifths of the coal in the western half of Cumberland Township belongs to the Cumber-[fol. 33b] land Coal Company, appellant, and according to

the map and testimony, something like two-fifths of it to the Buckeye Coal Company. None of this coal is in the hands of the original owners or persons who own the surface lands above the coal. It is practically admitted that this coal is held by the appellant company for future use and development as its needs may require for the United States Steel Company."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-fourth. The Trial Court erred in dismissing appellant's 13th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

13th Exception and Finding Involved Therein (Record, p. 457a)

"13. The Court erred in its 39th finding of fact, which reads:

[fol. 34b] "'39. The Board of Revision considered the above prices at which the coal was sold, covering a period of six years prior to the triennial assessment, in connection with all the other matters affecting value, such as location, transportation, future needs, cost of operation, etc.; and while some of the prices paid by the appellant were in pursuance of contracts made in 1919 when the market was better, only one or two farms were taken under the Grosscup options, and the others were purchased by appellant at the best prices it could obtain at the time, and this, in connection with other evidence, is more persuasive evidence of value at this time than any speculative features such as future needs, rate of development, cost of trans-

portation, all of which were considered by appellant and its engineers when the purchases were made.'

for the following reasons:

"(a) There is no testimony to support this conclusion.

"(b) The undisputed testimony shows that this finding is contrary to fact."

Ruling of the Court Thereon (Record, p. 470a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 35b] Exception (Record, p. 471a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-fifth. The Trial Court erred in entering its final order dated May 31, 1930, which order and the exception thereto are as follows:

Final Order (Record, p. 470a)

"Final Order

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 471a)

"Same day, appellants except to the ruling of the Court [fol. 36b] on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

No. 154, March Term, 1930

Appeal of Cumberland Coal Company, in Greene Township, from Decree at No. 223, June Term, 1928

Assignments of Error

And now, to wit, August 11, 1930, comes the appellant, Cumberland Coal Company, by its attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Greene at the value of $225.00 an acre, disregarding the fact that the coal along the river in Monongahela Township is assessed at only $300.00 an acre and it is undisputed that the rear coal as that in Greene Township is worth less than half as much as that fronting on the river as in Monongahela Township.

[fol. 37b] Second. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone a deduction in the assessment of 6% of the acreage where they allow such deduction to the person or corporation owning both coal and surface or surface alone.

Third. The Trial Court erred in dismissing appellant's 10th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

10th Exception and Finding Involved Therein (Record p. 507a)

"10. The Court erred in its 24th finding of fact, which reads:

" '24. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, [fol. 38b] and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed.'

for the following reasons:

"(a) The experts are men of practical knowledge, have constructed most of the plants in Greene County and have kept in touch with what the various owners of coal in that county are doing and their purposes.

"(b) The testimony of the experts is clear and explicit and there is not a syllable in the case which either contradicts or throws doubt upon their veracity or the soundness of the opinions expressed by them."

Ruling of the Court Thereon (Record p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 39b] Fourth. The Trial Court erred in dismissing appellant's 12th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

12th Exception (Record, p. 508a)

"12. The Court erred in its 26th finding of fact in so far as any inference can be drawn from said finding that the sales mentioned are a true index to the actual or market value of the coal in the year 1928, and in denying to the exceptant the explanation given by the witness Albright and others, which was uncontroverted, showing the conditions under which said coal was purchased, and why."

26th Finding (Record, p. 495a)

"26. The only recent sales of coal near and in this township were to the Cumberland Coal Company, who were the purchasers of a tract in the extreme rear of Cumberland Township in 1921 or 1922, known as the Gerard or Long Farm, of about 200 acres, for the price of $600.00 per acre; the Joseph Moredock tract of 360 acres in Greene Township, behind Cumberland, in 1925, at $600.00 per acre; the Keener tract in the lower edge of Greene Township was purchased in 1925 or 1926 at $650.00 per acre. Another Keener tract one-half mile south and four miles west of the Greene Township tract in Dunkard Township was sold at [fol. 40b] about the same time for $400.00 per acre. The John Lantz tract of approximately 400 acres in Whiteley and 400 acres in Greene Township, and directly in the rear of Cumberland Township, was purchased by the appellant in 1926 at $400.00 per acre. Five or six sales were made to H. A. Phillips, an appellant in Perry and Wayne Townships, about 1924, at from $250.00 to $295.00 per acre."

Ruling of the Court Thereon (Record, p. 519 a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Fifth. The Trial Court erred in dismissing appellant's 14th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

14th Exception and Finding Involved Therein (Record, p. 509a)

"14. The Court erred in its 28th finding of fact, which reads:

[fol. 41b] " '28. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with other classes of property and real estate throughout the county generally.'

"This finding is contrary to every fact proved in this case."

Ruling of the Court Thereon (Record p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Sixth. The Trial Court erred in dismissing appellant's 16th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

16th Exception and Conclusion Involved Therein (Record p. 510a)

"16. The Court erred in its 4th conclusion of law, which reads:

"'4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the [fol. 42b] purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent. of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.'

for the following reasons:

"(a) The Courts have never approved principle, although where assessments have been made and they were uniform and did not bear unjustly against any owners of property, they permitted them to stand notwithstanding their disapproval of the practice.

"(b) The finding of the Court shows the whole action of the Commissioners to be illegal, invalid and void in that they recognized and adopted the ratio of 33⅓% of value in the First and Second Wards of the Borough of Waynesburg, Greene County, Pennsylvania, and 50% in every other borough and township in the county."

Ruling of the Court thereon (Record p. 519a)

"And now, May 31, 1930, after argument and due consid- [fol. 43b] eration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed,
• • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Seventh. The Trial Court erred in dismissing appellant's 2d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

2d Exception and Finding Involved Therein (Record, p. 502a)

"2. The Court erred in its 12th finding of fact, which reads:

"'12. While the coal in Monongahela Township is valued at $300.00 an acre, the valuation of active coal around the mines in said township raises the valuation of the coal considerably higher than $300.00 an acre. The market value of the coal in this township is about $600.00 per acre, and the coal in the front third of Greene Township is worth between five and six hundred dollars an acre. The coal in the extreme rear end of Greene Township has a market value of around $450.00 an acre. Taking all these matters into consideration, the valuation placed on the coal [fol. 44b] by the assessors and the Board of Revision, in this township, is not unjust, inequitable, discriminatory, nor does it lack uniformity, and in placing this value on the coal, the Board of Revision has considered the remoteness or accessibility of the coal to market, the cost of its operation, and the means and costs of its transportation.'

for the reason that this is contrary to and not warranted by the evidence developed in this case."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exception noted and bill sealed.

A. H. Sayers. (Seal.)"

Eighth. The Trial Court erred in dismissing appellant's 3d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

3d Exception and Finding Involved Therein (Record p. 503a)

[fol. 45b] "3. The Court erred in its 13th finding of fact, which reads:

" '13. The testimony taken upon the hearing of this appeal disclosed that with the exception of a few acres, the coal of the Pittsburgh or River vein within Greene Township has been sold and is and for several years has all been held and owned by Cumberland Coal Company; that the most recent sale of coal of said vein in said township was the sale of the "Joseph Moredock", and "John F. Lantz" coal which is located partly in Greene Township and partly in the adjoining township of Whiteley, in which latter township appellant is the owner of 18,263 acres, more or less, of the coal of said vein and the "Levi and Jesse Keener" coal of said vein in Greene Township all which was purchased by Cumberland Coal Company at a price equal to or in excess of double the assessed valuation as fixed by the county commissioners.'

for the following reasons:

"That the Joseph Moredock, John F. Lantz and Levi and Jesse Keener sales were made prior to 1928 and were made for reasons peculiar to exceptant, and such sales are not evidence of the true market, real or actual value of the coal in that territory, as appears from the undisputed and uncontroverted testimony."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due con-[fol. 46b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Ninth. The Trial Court erred in dismissing appellant's 4th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

4th Exception and Finding Involved Therein (Record, p. 504a)

"4. The Court erred in its 15th finding of fact, which reads:

" '15. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of ma-[fol. 47b] chinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.'

for the following reasons:

"(a) There is no evidence to support this finding.

"(b) The evidence of the County Commissioners shows that they did not take these things into consideration, had no knowledge and made no attempt to acquire any but the most general information with regard thereto."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Tenth. The Trial Court erred in dismissing appellant's 5th exception to the findings of fact, which exception, find-[fol. 48b] ing, the decision of the Court thereon, and exception to such decision are as follows:

5th Exception and Finding Involved Therein (Record, p. 505a)

"5. The Court erred in so much of its 17th finding of fact, which reads:

"'* * * but the coal in Greene County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, * * *'"

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Eleventh. The Trial Court erred in dismissing appellant's 6th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

6th Exception and Finding Involved Therein (Record, p. 505a)

[fol. 49b] "6. The Court erred in so much of its 20th finding of fact, which states:

"'* * * and no attempt has been made in Greene County or *in any other county of Pennsylvania, or elsewhere,* so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.' (Italics ours.)

"This is not warranted by the evidence."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twelfth. The Trial Court erred in dismissing appellant's 7th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

7th Exception and Finding Involved Therein (Record, p. 505a)

"7. The Court erred in its 21st finding of fact, which reads:

"'21. The natural arrangement of the townships in [fol. 50b] Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.'

"This findings is contrary to the proved facts in this case."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 51b] Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Thirteenth. The Trial Court erred in dismissing appellant's 8th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

8th Exception and Finding Involved Therein (Record, p. 506a)

"8. The Court erred in that part of its 22d finding of fact, which reads: 'Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines.'

"This finding is contrary to the facts developed in the testimony."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

[fol. 52b] Fourteenth. The Trial Court erred in dismissing appellant's 9th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

9th Exception and Finding Involved Therein (Record, p. 506a)

"9. The Court erred in its 23d finding of fact, which reads:

" '23. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take into

consideration the possibility that the coal of the Cumberland Coal Company might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the values, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Cumberland Township, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Greene Township.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-[fol. 53b] clusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fifteenth. The Trial Court erred in dismissing appellant's 11th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

11th Exception (Record p. 508a)

"11. The Court erred in its 25th finding of fact in so far as any inference can be drawn from the finding that these contiguous lands afford means of getting either to a railroad or to the river, as this is matter dependent upon the depth of the vein, drainage, and the cheapest and best outlet, and other matters which were not shown by the evidence and which are purely for the company and its engineers when it opens the coal."

25th Finding (Record, p. 494a)

"25. That appellant company is not an operating company, but is a holding company and is the owner of 11,956

contiguous acres of coal of the Pittsburgh or River vein [fol. 54b] located within Greene Township, which acreage, with the exception of about five hundred acres, comprises the entire acreage of the township of Greene; that appellant's coal in Greene Township adjoins on the east and is contiguous to appellant's block of 9237 contiguous acres of coal in Cumberland Township, and its coal in Cumberland Township is contiguous to and on the north adjoins 7800 acres of coal of said vein situate in Jefferson Township and owned by appellant which borders upon the Monongahela River and has an outlet thereon; that approximately the whole of appellant's coal in Greene Township was purchased by appellant company under the terms of the Peter S. Grosscup agreements for which coal appellant paid from six to seven hundred dollars per acre; that the Cumberland Coal Company is affiliated with and controlled by United States Steel Corporation; and the H. C. Frick Coke Company is an operating company and is the owner of a large acreage of coal of said vein in the adjoining township of Jefferson and Rices Landing borough upon which there is an open mine or shaft not now being operated; that the H. C. Frick Coke Company is affiliated with and controlled by United States Steel Corporation; all of which coal land in Jefferson Township is contiguous to other coal land of appellant in Cumberland Township which is contiguous to appellant's coal of said vein in the township of Greene; that exhibit B offered in evidence by [fol. 55b] appellant shows in color the outline of appellant's 11,956 acres of coal land in Greene Township from the assessment and valuation of which appellant has appealed and said exhibit also shows in color the outline of appellant's 9237 acres of coal in the adjoining townships of Cumberland as well as the 38.9 acres of coal in Carmichaels borough from the assessment and valuation of which appellant has appealed, but exhibit B does not show in color the 7800 acres of appellant's coal in Jefferson township or the H. C. Frick Coke Company block of coal in Jefferson Township, both of which blocks of coal front upon and have outlets on the Monongahela River as does coal of both companies in Monongahela Township."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 56b] Sixteenth. The Trial Court erred in dismissing appellant's 13th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

13th Exception and Finding Involved Therein (Record, 509a)

"13. The Court erred in its 27th finding of fact, which reads:

"'27. The Board of Revision considered the above prices at which the coal was sold, covering a period of six years prior to the triennial assessment, in connection with all the other matters affecting value, such as location, transportation, future needs, cost of operation, etc.; and while some of the prices paid by the appellant were in pursuance of contracts made in 1919 when the market was better, only one or two farms were taken under the Grosscup options, and the others were purchased by appellant at the best prices it could obtain at the time, and this, in connection with other evidence, is more persuasive evidence of value at this time than any speculative features such as future needs, rate of development and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made.'

for the following reasons:

"(a) There is no testimony to support this conclusion.

[fol. 57b] "(b) The undisputed testimony shows that this finding is contrary to fact."

Ruling of the Court thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventeenth. The Trial Court erred in dismissing appellant's 15th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

15th Exception and Finding Involved Therein (Record, p. 510a)

"15. The Court erred in its 29th finding of fact, which reads:

" '29. The fact that the Pittsburgh coal in Greene Township practically all belongs to appellant, makes the assessment more equitable and just as to it than it might otherwise be since it owns the front coal with a market value of $600.00, and the rear coal with a market value of at least $450.00.' "

[fol. 58b] Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Eighteenth. The Trial Court erred in dismissing appellant's 17th exception to the conclusions of law, which ex-

ception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

17th Exception and Conclusion Involved Therein (Record, p. 511a)

"17. The Court erred in its 5th conclusion of law, which reads:

" '5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con- [fol. 59b] clusions of the Court, the exceptions are dismissed. • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Nineteenth. The Trial Court erred in dismissing appellant's eighteenth exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

18th Exception and Conclusion Involved Therein (Record, p. 511a)

"18. The Court erred in its 6th conclusion of law, which reads:

" '6. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due con-
[fol. 60b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed,
• • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twentieth. The Trial Court erred in dismissing appellant's 20th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

20th Exception and Conclusion Involved Therein (Record, p. 512a)

"20. The Court erred in its 8th conclusion of law, which reads:

" '8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have taken into consideration the various elements, which under the statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due con-
[fol. 61b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed,
• • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-first. The Trial Court erred in dismissing appellant's 21st exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

21st Exception and Conclusion Involved Therein
(Record, p. 512a)

"21. The Court erred in its 9th conclusion of law, which reads:

" '9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent. on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and origi-[fol. 62b] nal owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent. should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent. of their total acreage as exempt from taxation.'

for the following reasons:

"(a) There is not and has not been for over one hundred years any such distinction as the Court says.

"(b) There is no warrant or justification for allowing an owner who has title to both surface and coal or surface above, 6% and charging the owners of coal with the full acreage without any deduction, and thus imposing a burden upon them of paying taxes upon six in every hundred acres, from which all the other owners of acreage in Greene County are relieved."

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 63b] Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-second. The Trial Court erred in dismissing appellant's 22d exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

22d Exception and Conclusion Involved Therein (Record, p. 513a)

"22. The Court erred in its 10th conclusion of law, which reads:

" '10. Having regard to the fifty per cent. ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-
[fol. 64b] clusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-third. The Trial Court erred in dismissing appellant's 23d exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

23d Exception and Conclusion Involved Therein
(Record, p. 514a)

"23. The Court erred in its 11th conclusion of law, which reads:

" '11. This appeal should be dismissed at the cost of the appellant.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

[fol. 65b] Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-fourth. The Trial Court erred in dismissing appellant's 24th exception to the entering of the nisi decree, which exception, nisi decree, the decision of the Court thereon, and exception to such decision are as follows:

24th Exception and Nisi Decree Involved Therein
(Record, p. 514a)

"24. The Court erred in entering the following nisi decree:

'Nisi Decree

" 'And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

" 'The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization

of assessments of property in said county from the triennial assessment for the year 1928, in this case is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.
[fol. 66b] " 'Ordered, adjudged and decreed accordingly.
By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.' "

Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-fifth. The Trial Court erred in dismissing appellant's 1st exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

1st Exception and Finding Involved Therein
(Record, p. 501a)

"1. The Court erred in so much of its 11th finding of fact, which reads:

" " * * * At its southeast corner it is within about [fol. 67b] two miles of an operating broad gauge railroad which crosses the Monongahela River above Greensboro and follows along its eastern bank to the West Virginia state line. Most of the Pittsburgh coal in Monongahela Township is being operated principally by the Pittsburgh Steel Company, at Alicia No. 2, and the Penn Pit Coal and Coke Company, but there are a number of small mines in this township operating in the Pittsburgh vein of coal and

in the Sewickley or Mapletown vein of coal. The Greene Township block of coal borders on the coal of the Cumberland Coal Company in Cumberland Township, it also touches coal of the Cumberland Coal Company in Jefferson Township, and is within three miles of the Monongahela Railroad running through Jefferson Township. Immediate access to this coal could be had through coal lands in Monongahela Township belonging to the Cumberland Coal Company and the H. C. Frick Coke Company which extend from this block to the Monongahela River. Along the southern border of Greene Township the Shannopin Coal and Coke Company is conducting a major operation in the Pittsburgh or River vein of coal.'

"The foregoing statement of facts and the inferences to be drawn therefrom are unwarranted, and further, there was no evidence in this case that the best way to get this coal out was as stated in this finding, and the finding as a whole is unfair and unjust to this exceptant."

[fol. 68b] Ruling of the Court Thereon (Record, p. 519a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-sixth. The trial Court erred in entering its final order dated May 31, 1930, which order and the exception thereto are as follows:

Final Order (Record, p. 519a)

"Final Order

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is

ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.
[fol. 69b] "Ordered, adjudged and decreed accordingly.
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 520a)

"Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

No. 155, March Term, 1930

Appeal of Cumberland Coal Company, in Perry Township, From Decree at No. 224, June Term, 1928

Assignments of Error

And now, to wit, August 11, 1930, comes the appellant, Cumberland Coal Company, by its attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Perry at the same value, disre-
[fol. 70b] garding differences in actual or market values where it is undisputed that the actual or market value of the coal varies throughout the township.

Second. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone a deduction in the assessment of 6%

of the acreage where they allow such deduction to the person or corporation owning both coal and surface or surface alone.

Third. The Trial Court erred in dismissing appellant's 14th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

14th Exception and Finding Involved Therein (Record, p. 560a)

"14. The Court erred in its 32nd finding of fact which reads:

"'32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in [fol. 71b] the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in an unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed.'"

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourth. The Trial Court erred in dismissing appellant's 15th exception to the findings of fact, which exception,

finding, the decision of the Court thereon, and exception to such decision are as follows:

15th Exception (Record, p. 561a)

"15. The Court erred in its 33d finding of fact in so far as it determines the value of exceptant's entire holdings [fol. 72b] in Perry Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township."

33d Finding (Record, p. 546a)

"33. The testimony taken upon the hearing of this appeal discloses that appellant is the owner of a contiguous block of 3126 acres of coal of the Pittsburgh or river vein in Perry township of the total taxable value of $343,860.00; that the most recent sale or sales of coal of said vein in said township was the sale of the 'Headley Heirs' coal and the sale of the 'Osborne Wade' coal, 'Eli Pethtel' coal and 'Kinsey John' coal, all which coal of said vein was sold at a price in excess of double the assessed valuation as fixed by the county commissioners upon all the coal of said vein in Perry township."

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 73b] Fifth. The Trial Court erred in dismissing appellant's 16th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

16th Exception and Finding Involved Therein (Record, p. 561a)

"16. The Court erred in its 36th finding of fact which reads:

" '36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other matters effecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-
[fol. 74b] clusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Sixth. The Trial Court erred in dismissing appellant's 17th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

17th Exception and Finding Involved Therein (Record, p. 562a)

"17. The Court erred in its 37th finding of fact which reads:

" '37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 75b] Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventh. The Trial Court erred in dismissing appellant's 1st exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

1st Exception and Finding Involved Therein (Record, p. 553a)

"1. The Court erred in its 5th finding of fact, which reads:

" '5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.'

"This finding is unfair to exceptant for the reason that the nearest line in Perry Township to Rices Landing on the Monongahela River is 14 miles distant (Air line measure-[fol. 76b] ment), and the farthest point in that township is 16 miles (air line measurement)."

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Eighth. The Trial Court erred in dismissing appellant's 2d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

2d Exception and Finding Involved Therein (Record, p. 554a)

"2. The Court erred in its 6th finding of fact which reads:

" '6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a [fol. 77b] point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.'

for the reason that the railroad at Nemicolon, referred to in this finding, is at least 13 miles (air line measurement) from the lands of exceptant in Perry Township, and the railroad at Mather is 11 miles."

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Ninth. The Trial Court erred in dismissing appellant's 3d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 78b] 3d Exception and Finding Involved Therein (Record, p. 554a)

"3. The Court erred in its 12th finding of fact, which reads:

" '12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scott's Run end of this railroad.'

for the following reasons:

"(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

"(b) There is no evidence that the Court was justified in finding that this railroad is owned by the Monongahela

Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it.'

[fol. 79b] Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Tenth. The Trial Court erred in dismissing appellant's 4th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

4th Exception and Finding Involved Therein (Record, p. 555a)

"4. The Court erred in its 13th finding of fact, which reads:

"'13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the construction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be [fol. 80b] transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Cave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small.'

"There is nothing in the testimony which would warrant the conclusions drawn by the Court."

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Eleventh. The Trial Court erred in dismissing appellant's 5th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 81b] 5th Exception and Finding Involved Therein (Record, p. 556a)

"5. The Court erred in its 14th finding of fact, which reads:

"'14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore.'"

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

[fol. 82b] Twelfth. The Trial Court erred in dismissing appellant's 6th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

6th Exception and Finding Involved Therein (Record, p. 556a)

"6. The Court erred in its 15th finding of fact, which reads:

" '15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling value at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these [fol. 83b] appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Thirteenth. The Trial Court erred in dismissing appellant's 7th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

7th Exception and Finding Involved Therein (Record, p. 557a)

"7. The Court erred in its 19th finding of fact, which reads:

" '19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the [fol. 84b] location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourteenth. The Trial Court erred in dismissing appellant's 8th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

8th Exception (Record, p. 558a)

"8. The Court erred in that part of its 21st finding of [fol. 85b] fact which says that the Greene County coal is

not in direct competition with the fuel or steam coal shipped to the lake regions."

21st Finding (Record, p. 542a)

"21. There has been a depreciation in the value of Pittsburgh coal in the past six years throughout Greene County, due in part to the discrimination in freight rates in favor of the West Virginia and Southern Districts against coal in this district, but the coal in Greene County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, and is being operated by steel companies for their own use or held in reserve by the Cumberland Coal Company, the H. C. Frick Coke Company, and other holding companies, for future needs in connection with the business of the production and manufacturing of iron and steel."

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 86b] Fifteenth. The Trial Court erred in dismissing appellant's 9th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

9th Exception and Finding Involved Therein (Record, p. 558a)

"9. The Court erred in its 24th finding of fact, which reads:

"'24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene

County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

[fol. 87b] Sixteenth. The Trial Court erred in dismissing appellant's 10th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

10th Exception and Finding Involved Therein
(Record, p. 558a)

"10. The Court erred in its 25th finding of fact, which reads:

" '25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the borough included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.' "

[fol. 88b] Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventeenth. The Trial Court erred in dismissing appellant's 11th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

11th Exception (Record, p. 559a)

"11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River."

26th Finding (Record, p. 543a)

"26. Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as [fol. 89b] you go west from the Monongahela River. Some slight differences and increase in price within the zones outlined are due to advantages in the way of transportation or nearness to transportation by river or rail already available."

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Eighteenth. The Trial Court erred in dismissing appellant's 12th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

12th Exception and Finding Involved Therein
(Record, p. 559a)

"12. The Court erred in so much of its 28th finding of fact which reads:

"'* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any [fol. 90b] given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator.'"

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:
A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Nineteenth. The Trial Court erred in dismissing appellant's 13th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

13th Exception and Finding Involved Therein
(Record, p. 560a)

"13. The Court erred in its 29th finding of fact, which reads:

" '29. The Commissioners, in revising and equalizing the [fol. 91b] assessments on the Pittsburgh vein of coal, did take into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 92b] Twentieth. The Trial Court erred in dismissing appellant's 18th exception to the conclusions of law, which exceptions, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

18th Exception and Conclusion Involved Therein (Record, p. 562a)

"18. The Court erred in its 4th conclusion of law, which reads:

" '4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this State have recognized as legal, assessments made by assessors and

adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual market value, this basis being adopted by assessors uniformly with the exceptions of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 93b] Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

Twenty-first. The Trial Court erred in dismissing appellant's 19th exception to the conclusion of law, which exception, finding, the decision of the Court thereon, and exceptions to such decision are as follows:

19th Exception and Conclusion Involved Therein (Record, p. 562a)

"19. The Court erred in its 5th conclusion of law, which reads:

" '5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)

[fol. 94b] Twenty-second. The Trial Court erred in dismissing 21st exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

21st Exception and Conclusion Involved Therein (Record, p. 563a)

"21. The Court erred in its 7th conclusion of law, which reads:

" '7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)

[fol. 95b] Twenty-third. The Trial Court erred in dismissing appellant's 22d exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

22d Exception and Conclusion Involved Therein (Record, p. 563a)

"22. The Court erred in its 8th conclusion of law, which reads:

" '8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reason-

able care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)

[fol. 96b] Twenty-third. The Trial Court erred in dismissing appellant's exception to the conclusion of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

23d Exception and Conclusion Involved Therein (Record, p. 564a)

"23. The Court erred in its 9th conclusion of law, which reads:

" '9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed, on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for

the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation.' "

[fol. 97b] Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-fifth. The Trial Court erred in dismissing appellant's 24th exception to the conclusion of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

24th Exception and Conclusion Involved Therein (Record, p. 564a)

"24. The Court erred in its 10th conclusion of law, which reads:

" '10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher [fol. 98b] than other values but is practically uniform, equitable and just.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-sixth. The Trial Court erred in dismissing appellant's 25th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

25th Exception and Conclusion Involved Therein (Record, p. 565a)

"25. The Court erred in its 11th conclusion of law, which reads:

" '11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. [fol. 99b] The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-seventh. The Trial Court erred in dismissing appellant's 26th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

26th Exception and Conclusion Involved Therein (Record, p. 565a)

"26. The Court erred in its 12th conclusion of law, which reads:

" '12. This appeal should be dismissed at the cost of the appellant.' "

[fol. 100b] Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:
A. H. Sayers, President Judge."

Exception (Record, p 573a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-eighth. The Trial Court erred in dismissing appellant's 27th exception to the entering of the nisi decree, which exception, nisi decree, the decision of the Court thereon, and exception to such decision are as follows:

27th Exception and Nisi Decree Involved Therein (Record, p. 566a)

"27. The Court erred in entering the following nisi decree:

" 'Nisi Decree

" 'And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

" 'The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial [fol. 101b] assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

" 'Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.' "

Ruling of the Court Thereon (Record, p. 573a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-ninth. The Trial Court erred in entering its final order dated May 31, 1930, which order and exception thereto are as follows:

[fol. 102b] Final Order (Record, p. 573a)

"Final Order

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in

said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 573a)

"Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 103b] No. 156, March Term, 1930

Appeal of Cumberland Coal Company, in Wayne Township, from Decree at No. 225, June Term, 1928

Assignments of Error

And now, to wit, August 11, 1930, comes the appellant, Cumberland Coal Company, by its attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Wayne at the same value, disregarding differences in actual or market values where it is undisputed that the actual or market value of the coal varies throughout the township.

Second. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone a deduction in the assessment of 6% of the acreage where they allow such deduction to the person or corporation owning both coal and surface or surface alone.

[fol. 104b] Third. The Trial Court erred in dismissing appellant's 1st exception to the findings of fact, which ex-

ception, finding, the decision of the Court thereon, and exception to such decision are as follows:

1st Exception and Finding Involved Therein (Record, p. 588a)

"1. The Court erred in its 5th finding of fact, which reads:

" '5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abondoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.'

"This finding is unfair to exceptant for the reason that the nearest line in Wayne Township to Rices Landing on the Monongahela River is 14 miles distant (air line measurement), and the farthest point in that township is 17½ miles (air line measurement)."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con- [fol. 105b] clusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourth. The Trial Court erred in dismissing appellant's 2d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

2d Exception and Finding Involved Therein (Record, p. 589a)

"2. The Court erred in its 6th finding of fact which reads:

"'6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Township.'

[fol. 106b] for the reason that the railroad at Nemicolon, referred to in this finding, is at least 16 miles (air line measurement) from the lands of exceptant in Wayne Township, and the railroad at Mather is 11 miles."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fifth. The Trial Court erred in dismissing appellant's 3d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

3d Exception and Finding Involved Therein (Record, p. 589a)

"3. The Court erred in its 12th finding of fact, which reads:

"'12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad

operated by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, [fol. 107b] to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad.'

for the following reasons:

"(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

"(b) There is no evidence that the Court was justified in finding that this railroad is owned by the Monongahela Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 108b] Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Sixth. The Trial Court erred in dismissing appellant's 4th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

4th Exception and Finding Involved Therein (Record, p. 590a)

"4. The Court erred in its 13th finding of fact, which reads:

"'13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the construction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be brt a short distance from the main line of the railroad at Leave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching [fol. 109b] the railroad with a great part of this coal would be very small.'

"There is nothing in the testimony which would warrant the conclusions drawn by the Court."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventh. The Trial Court erred in dismissing appellant's 5th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

5th Exception and Finding Involved Therein (Record, p. 591a)

"5. The Court erred in its 14th finding of fact, which reads:

"'14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal

within the entire limits of Perry Township at $110.00 an [fol. 110b] acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Eighth. The Trial Court erred in dismissing appellant's 6th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

6th Exception and Finding Involved Therein (Record, p. 592a)

"6. The Court erred in its 15th finding of fact, which reads:

[fol. 111b] " '15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western

parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation.'"

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due con- [fol. 112b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed. • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Ninth. The Trial Court erred in dismissing appellant's 7th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

7th Exception and Finding Involved Therein (Record, p. 592a)

"7. The Court erred in its 19th finding of fact, which reads:

"'19. The County Commissioners, sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail or by the river, its proximity to operating coal mines and

transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of ma- [fol. 113b] chinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Tenth. The Trial Court erred in dismissing appellant's 8th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

8th Exception (Record, p. 593a)

"8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct competition with the fuel or steam coal shipped to the lake regions."

21st Finding (Record, p. 542a)

"21. There has been a depreciation in the value of Pitts- [fol. 114b] burgh coal in the past six years throughout Greene County, due in part to the discrimination in freight rates in favor of the West Virginia and Southern Districts against coal in this district, but the coal in Greene County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, and is being operated by steel companies for their own use or held in reserve by

the Cumberland Coal Company, the H. C. Frick Coke Company, and other holding companies, for future needs in connection with the business of the production and manufacturing of iron and steel."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Eleventh. The Trial Court erred in dismissing appellant's 9th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 115b] 9th Exception and Finding Involved Therein (Record, p. 593a)

"9. The Court erred in its 24th finding of fact, which reads:

" '24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twelfth. The Trial Court erred in dismissing appellant's 10th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 116b] 10th Exception and Finding Involved Therein (Record, p. 593a)

"10. The Court erred in its 25th finding of fact, which reads:

"'25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.'

"The uncontroverted testimony shows Wayne Township to be in the third zone and not in the second zone as the Court has said. There is no evidence to support this finding."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due con-
[fol. 117b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Thirteenth. The Trial Court erred in dismissing appellant's 11th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

11th Exception (Record, p. 594a)

"11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines, and it is recognized that the value of coal decreases as you go west from the Monongahela River."

26th Finding (Record, p. 543a)

"26. Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you go west from the Monongahela River. Some slight differences and increase in price within the zones outlined are [fol. 118b] due to advantages in the way of transportation or nearness to transportation by river or rail already available."

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:
A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Fourteenth. The Trial Court erred in dismissing appellant's 12th exception to the findings of fact, which exception, finding, the decision of Court thereon, and exception to such decision are as follows:

12th Exception and Finding Involved Therein (Record, p. 595a)

"12. The Court erred in so much of its 28th finding of fact, which reads:

"'* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist as [fol. 119b] between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator.'"

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Fifteenth. The Trial Court erred in dismissing appellant's 13th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

13th Exception and Finding Involved Therein (Record, p. 595a)

"13. The Court erred in its 29th finding of fact, which reads:

"'29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take [fol. 120b] into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to

to the value, they did discuss the coal values with experts, examine the coal measures and make recommendations as attorneys for the appellant company and with operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed,
* * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Sixteenth. The Trial Court erred in dismissing appellant's 14th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 121b] 14th Exception and Finding Involved Therein (Record, p. 596a)

"14. The Court erred in its 32d finding of fact which reads:

" '32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear

end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed.'"

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exception filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 122b] Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventeenth. The Trial Court erred in dismissing appellant's 15th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

15th Exception (Record, p. 596a)

"15. The Court erred in its 34th finding of fact in so far as it determines the value of exceptant's entire holdings in Wayne Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township."

34th Finding (Record, p. 546a)

"34. The testimony taken upon the hearing of this appeal discloses that appellant is the owner of a contiguous block of 6012 acres of coal of the Pittsburgh or River vein in Wayne Township of the total taxable value of $510,-980.00; that the most recent sale or sales of coal of said vein in said township was the sale of the 'Felix Bell' coal and the sale of the 'Ben Fox' coal, 'Eli Pethtel' coal and 'Spencer Wade' coal, all which coal of said vein was sold at a price in excess of double the assessed valuation as fixed by the county commissioners upon all the coal of said vein in Wayne township."

[fol. 123b] Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Eighteenth. The Trial Court erred in dismissing appellant's 16th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

16th Exception and Finding Involved Therein (Record, p. 596a)

"16. The Court erred in its 36th finding of fact which reads:

"'36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other matters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connection with other evidence, is more persuasive of value at the [fol. 124b] time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time.'"

Ruling of the Court Thereon (Record p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers, (Seal.)"

Nineteenth. The Trial Court erred in dismissing appellant's 17th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

17th Exception and Finding Involved Therein (Record, p. 597a)

"17. The Court erred in its 37th finding of fact, which reads:

" '37. The coal of appellant is assessed at practically the same value and rate, and in substantial uniformity, with all [fol. 125b] classes of property and real estate throughout the county generally.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:
A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twentieth. The Trial Court erred in dismissing appellant's 18th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

18th Exception and Conclusion Involved Therein (Record, p. 597a)

"18. The Court erred in its 4th conclusion of law, which reads:

" '4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the

purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was [fol. 126b] adopted in this case by the assessors and the Board of Revision throughout Greene County, whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-first. The Trial Court erred in dismissing appellant's 19th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

19th Exception and Conclusion Involved Therein (Record, p. 598a)

"19. The Court erred in its 5th conclusion of law, which reads:

" '5. The Board of Commissioners, in fixing and valuing [fol. 127b] appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-second. The Trial Court erred in dismissing appellant's 21st exception to the conclusion of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

21st Exception and Conclusion Involved Therein (Record, p. 598a)

"21. The Court erred in its 7th conclusion of law, which reads:

" '7. The Commissioners have not imposed upon appellant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion [fol. 128b] of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers, (Seal.)"

Twenty-third. The Trial Court erred in dismissing appellant's 2d exception to the conclusions of law, which ex-

ception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

22d Exception and Conclusion Involved Therein (Record, p. 599a)

"22. The Court erred in its 8th conclusion of law, which reads:

" '8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with reasonable care and skill and have assessed the Pittsburgh or River vein of coal with respect to township lines and have [fol. 129b] taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-fourth. The Trial Court erred in dismissing appellant's 23d exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

23d Exception and Conclusion Involved Therein (Record, p. 599a)

"23. The Court erred in its 9th conclusion of law, which reads:

" '9. The Pittsburgh or River vein of coal underlying lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for

[fol. 130b] roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation.'"

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 131b] Twenty-fifth. The Trial Court erred in dismissing appellant's 24th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

24th Exception and Conclusion Involved Therein (Record, p. 600a)

"24. The Court erred in its 10th conclusion of law, which reads:

" '10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than

front coal in the same township belonging to operating companies, that the assessed value of appellant's property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically uniform, equitable and just.'"

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed.

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 132b] Twenty-sixth. The Trial Court erred in dismissing appellant's 25th exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

25th Exception and Conclusion Involved Therein (Record, p. 600a)

"25. The Court erred in its 11th conclusion of law, which reads:

"'11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that appellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law.'"

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

[fol. 133b] Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-seventh. The Trial Court erred in dismissing appellant's 26th exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

26th Exception and Finding Involved Therein (Record, p. 601a)

"26. The Court erred in its 4th finding of fact, which reads:

" '4. This appeal should be dismissed at the cost of the appellant.' "

Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

[fol. 134b] Twenty-eighth. The Trial Court erred in dismissing appellant's 27th exception to the entering of the nisi decree, which exception, nisi decree, the decision of the Court thereon, and exception to such decision are as follows:

27th Exception and Nisi Decree Involved Therein (Record, p. 601a)

"27. The Court erred in entering the following nisi decree:

"'Nisi Decree

"'And now, January 13, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"'The appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assesment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within 30 days, said decree shall be entered as a final decree.

"'Ordered, adjudged and decreed accoringly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.'"

[fol.135b] Ruling of the Court Thereon (Record, p. 608a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-ninth. The Trial Court erred in entering its final order dated May 31, 1930, which order and the exception thereto are as follows:

Final Order (Record, p. 608a)

"Final Order

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-

clusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Cumberland Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. [fol. 136b] "Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 609a)

"Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

No. 159, March Term, 1930

Appeal of Henry A. Phillips, in Wayne Township, from Decree at No. 230, June Term, 1928

Assignments of Error

And now, to wit, August 11, 1930, comes Henry A. Phillips by his Attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Wayne at the same value, disregarding differences in actual or market values where it is undisputed that the actual or market value of the coal varies throughout the township.

[fol. 137b] Second. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone in deduction in the assessment of 6% of the acreage where they allow such deduction to the

person or corporation owning both coal and surface or surface alone.

Third. The Trial Court erred in dismissing appellant's 1st exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

1st Exception and Finding Involved Therein (Record, p. 625a)

"1. The Court erred in its 5th finding of fact, which reads:

"'5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.'

[fol. 138b] "This finding is wholly inapplicable to this exceptant, as Henry A. Phillips has no connection with H. C. Frick Coke Company."

Ruling of the Court Thereon (Record, p. 646a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 646a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourth. The Trial Court erred in dismissing appellant's 2nd exception to the findings of fact, which exception, find-

ing, the decision of the Court thereon, and exception to such decision are as follows:

2d Exception and Finding Involved Therein (Record, p. 626a)

"2. The Court erred in its 6th finding of fact, which reads:

"'6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a [fol. 139b] point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.'

"This finding is wholly inapplicable to this exceptant as it owns no coal land in either Morgan or Jefferson Townships and has no connection with the railroad mentioned therein."

Ruling of the Court Thereon (Record, p. 646a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 646a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers, (Seal.)"

Fifth to Twenty-eighth, Inclusive. The 4th finding of fact of the Trial Court is as follows:

"4. The Court adopts the Findings of Fact in paragraphs 3 to 37, inclusive, and the Conclusions of Law in paragraphs 1 to 11, inclusive, as stated at length in the [fol. 140b] appeal of the Cumberland Coal Company re-

lating to Perry Township, at No. 224 June Term, 1928, this day filed, in which facts and law applicable to Wayne Township are found, and makes them and each of them part of this opinion, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal."

In view of the above action of the Trial Court and of the fact that this appellant's exceptions 3 to 27, both inclusive, to the said adopted Findings of Fact and Conclusions of Law, and the rulings of the Trial Court thereon, and exceptions thereto, are in each instance identical with those of record in Appeal of Cumberland Coal Company in Wayne Township, this appellant adopts and files for error in this appeal the following assignments of error, filed in the Appeal of Cumberland Coal Company, in Wayne Township, at No. 156 March Term, 1930, of this Court (printed on pages 114 to 143 of this Brief): Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, and Twenty-eighth.

Twenty-ninth. The Trial Court erred in entering its final order dated May 31, 1930, which order and the exception thereto are as follows:

[fol. 141b] Final Order (Record, p. 646a)

"Final Order

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of Henry A. Phillips from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 646a)

"Same day, appellant excepts to the ruling of the Court on exceptions, and to its entry of the foregoing order, and asks that a bill of exceptions be sealed.

"Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 142b] No. 160, March Term, 1930

Appeal of Piedmont Coal Company, in Wayne Township, from Decree at No. 229, June Term, 1928

Assignments of Error

And now, to wit, August 11, 1930, comes Piedmont Coal Company, by its attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Wayne at the same value, disregarding differences in actual or market values where it is undisputed that the actual or market value of the coal varies throughout the township.

Second. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone a deduction in the assessment of 6% of the acreage where they allow such deduction to the person or corporation owning both coal and surface or surface alone.

Third. The Trial Court erred in dismissing appellant's 1st exception to the findings of fact, which exception, find-[fol. 143b] ing, the decision of the Court thereon, and exception to such decision are as follows:

1st Exception and Finding Involved Therein (Record, p. 662a)

"1. The Court erred in its 5th finding of fact, which reads:

" '5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.'

"This finding is wholly inapplicable to this exceptant, as the Piedmont Coal Company has no connection with the H. C. Frick Coke Company."

Ruling of the Court Thereon (Record, p. 683a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

[fol. 144b] Exception (Record, p. 683a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourth. The Trial Court erred in dismissing appellant's 2d exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

2d Exception and Finding Involved Therein (Record, p. 663a)

"2. The Court erred in its 6th finding of fact, which reads:

" '6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships ex-

tends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County side of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.'

"This finding is wholly inapplicable to this exceptant as it owns no coal land in either Morgan or Jefferson Townships and has no connection with the railroad mentioned therein."

[fol. 145b] Ruling of the Court Thereon (Record, p. 683a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 683a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fifth to Twenty-eighth, Inclusive. The 4th finding of fact of the Trial Court is as follows:

"4. The Court adopts the Findings of Fact in paragraphs 3 to 37, inclusive, and the Conclusions of Law in paragraphs 1 to 11, inclusive, as stated at length in the appeal of the Cumberland Coal Company relating to Perry Township, at No. 224 June Term, 1928, this day filed, in which facts and law applicable to Wayne Township are found, and makes them and each of them part of this opinion, substituting in paragraphs 33 and 34 the coal acreage and valuation applying to this appeal."

In view of the above action of the Trial Court and of the fact that this appellant's exceptions 3 to 27, both inclusive, to the said adopted Findings of Fact and Conclusions of [fol. 146b] Law, and the rulings of the Trial Court thereon, and exceptions thereto, are in each instance identical with

those of record in Appeal of Cumberland Coal Company in Wayne Township, this appellant adopts and files for error in this appeal the following respective assignments of error, filed in the Appeal of Cumberland Coal Company, in Wayne Township, at No. 156 March Term, 1930, of this Court (printed on pages 114 to 143 of this Brief): Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, and Twenty-eighth.

Twenty-ninth. The Trial Court erred in entering its final order dated May 31, 1930, which order and the exception thereto are as follows:

Final Order (Record, p. 683a)

"Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of Piedmont Coal Company from the decision of the Board of Commissioners of Greene County, sitting as a Board of Revision and Equalization of assessments of property in said county [fol. 147b] from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 683a)

"Same day, appellant excepts to the ruling of the Court on exceptions, and to its entry of the foregoing order, and asks that a bill of exceptions be sealed.

"Same day, appellant's exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

No. 161, March Term, 1930

Appeal of GREENE COUNTY COAL COMPANY, in Perry Township, from Decree at No. 227, June Term, 1928

ASSIGNMENTS OF ERROR

And now, to wit, August 11, 1930, comes the appellant, Greene County Coal Company, by its attorneys, Kyle & Reinhart and Reed, Smith, Shaw & McClay, and files the following assignments of error:

First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein, within the territorial [fol. 148b] limits in the Township of Perry at the same value, disregarding differences in actual or market value, where it is found by the Trial Court that the actual or market value of the coal varies throughout the township.

Second. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in refusing to allow the owner of coal alone a deduction in the assessment of 6% of the acreage where they allowed such deduction to the person or corporation owning both coal and surface of surface alone.

Third. The Trial Court erred in dismissing appellant's first exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

1st Exception and Finding Involved Therein (Record, p. 699a)

"1. The Court erred in its 5th finding of fact, which reads:

" '5. The H. C. Frick Coke Company, operating from an opening in Rices Landing Borough through Jefferson Township, has driven an opening back to the coal land of the Cumberland Coal Company and has for the present abandoned its workings. At Rices Landing it has an opening through a shaft on the Monongahela River, which forms

[fol. 149b] the eastern boundary of Greene County; and it also owns a block of coal adjoining the Monongahela River and coal of the Cumberland Coal Company in Monongahela Township, immediately south of the mouth of Whiteley Creek, which empties into said river.'

"This finding is wholly inapplicable to this exceptant as Greene County Coal Company has no connection with the H. C. Frick Coke Company."

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourth. The Trial Court erred in dismissing appellant's second exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

2nd Exception and Finding Involved Therein (Record p. 700a)

"2. The Court erred in its 6th finding of fact, which reads:

[fol. 150b] " '6. An active operating railroad engaged in hauling coal from mines in Morgan and Jefferson Townships extends from Jefferson, Pennsylvania, and connects with railroads on the Monongahela River. A railroad extends up the Greene County site of the Monongahela River to a point beyond the works of the Buckeye Coal Company at Nemicolon and rights of way have been taken up for a railroad up Whiteley Creek, over lands of the Cumberland Coal Company, and the H. C. Frick Coke Company in Monongahela and into Cumberland and Greene Townships.'

"This finding is wholly inapplicable to this exceptant as it owns no local land in either Morgan or Jefferson Townships and has no connection with the railroad mentioned therein."

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 151b] Fifth. The Trial Court erred in dismissing appellant's third exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

3rd Exception and Finding Involved Therein (Record, p. 700a)

"3. The Court erred in its 12th finding of fact, which reads:

"'12. In addition to the railroads hereinbefore mentioned in this opinion, there is a broad gauge railroad operated by the Monongahela Railroad Company extending up Scotts Run in Monongalia County, West Virginia, to Brave, in the southwest corner of Wayne Township, Greene County, Pennsylvania. This railroad is along Dunkard Creek, and at some points approaches very near to the south line of Perry Township and touches the south line of Wayne Township along Dunkard Creek. This is an operating railroad that hauls coal and freight which is delivered to consignees along the whole line, its principal point of delivery in Greene County being at Blacksville, West Virginia, and at Brave, in Wayne Township. A great deal of coal is hauled over the Scotts Run end of this railroad.'

for the following reasons:

"(a) The testimony shows that this railroad in point of fact is not a railroad worthy of the name.

"(b) There is no evidence that the Court was justified [fol. 152b] in finding that this railroad is owned by the Monongahela Railroad Company, or that the railroad gave any value to any lands or coal in proximity to it."

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Sixth. The Trial Court erred in dismissing appellant's fourth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

4th Exception and Finding Involved Therein (Record, p. 701a)

"4. The Court erred in its 13th finding of fact, which reads:

" '13. Generally, the coal in Wayne and Perry Townships can only be reached by shafts sunk from the surface to a depth of about five hundred feet, and the coal of the Cumberland Coal Company could be transported by the [fol. 153b] construction of approximately three miles of railroad extending north from the Scotts Run railroad. The coal belonging to other appellees in these two townships can be transported by the construction of additional railways or sidings that would be but a short distance from the main line of the railroad at Brave and Blacksville. The H. A. Phillips coal, the Kent coal, and the coal of the Greene Improvement Company, lies immediately on and along the railroad as at present constructed, and the cost of reaching the railroad with a great part of this coal would be very small.'

"There is nothing in the testimony which would warrant the conclusions drawn by the Court."

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventh: The Trial Court erred in dismissing appellant's fifth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and ex- [fol. 154b] ception to such decision are as follows:

5th Exception and Finding Involved Therein (Record, p. 702a)

"5. The Court erred in its 14th finding of fact, which reads:

" '14. The Board of Revision and Equalization have valued and assessed the Pittsburgh or River vein of coal within the entire limits of Perry Township at $110.00 an acre, and in Wayne Township at $85.00 an acre, and their assessment has been made with respect to actual value as determined by the selling price and the market value of the coal, the railroads and other means of transportation, the probable time when the coal will be mined and removed, and the value of other coal lying in the adjoining townships of Dunkard, Whiteley, Franklin, Center, Jackson and Gilmore.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

[fol. 155b] Eighth. The Trial Court erred in dismissing appellant's sixth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

6th Exception and Finding Involved Therein (Record, p. 702a)

"6. The Court erred in its 15th finding of fact, which reads:

"'15. The testimony in this case shows that while the nearness or remoteness of the coal throughout Greene County and in the townships of Perry and Wayne is affected by the price generally which diminishes as you proceed west from the Monongahela River, it has a very great added or additional value because of its nearness to transportation by railroad as described above. While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said township, the assessment based on township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value, it being conceded that the purpose of most of the holders of the coal involved in these appeals is to hold for future [fol. 156b] consumption, the coal of the Cumberland Coal Company substantially belonging to the United States Steel Corporation.'"

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, applicants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Ninth. The Trial Court erred in dismissing appellant's seventh exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

7th Exception and Finding Involved Therein (Record, p. 703a)

"7. The Court erred in its 19th finding of fact, which reads:

" '19. The County Commissioners sitting as a Board of Revision and Equalization, did take into consideration the actual conditions existing in the coal formation, the thickness of vein, stratification, depth, quality, quantity, the location of the coal as to being accessible to market by rail [fol. 157b] or by the river, its proximity to operating coal mines and transportation facilities already in use or available for future use, the time at which the various blocks of coal are likely to be operated and marketed, and the cost of machinery and equipment and permanent improvements necessary to market the coal, and the market value of other coal lands and of other real estate throughout the county.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:
A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Tenth. The Trial Court erred in dismissing appellant's eighth exception to the findings of fact, which exception,

finding, the decision of the Court thereon, and exception to such decision are as follows:

8th Exception (Record, p. 704a)

"8. The Court erred in that part of its 21st finding of fact which says that the Greene County coal is not in direct [fol. 158b] competition with the fuel or steam coal shipped to the lake regions."

21st Finding (Record p. 542)

"21. There has been a depreciation in the value of Pittsburgh coal in the past six years throughout Greene County, due in part to the discrimination in freight rates in favor of the West Virginia and Southern Districts against coal in this district, but the coal in Greene County is a metallurgical coal, sometimes spoken of as a coking coal, is not in direct competition with the fuel or steam coal shipped to the Lake Regions, and is being operated by steel companies for their own use or held in reserve by the Cumberland Coal Company, the H. C. Frick Coke Company, and other holding companies, for future needs in connection with the business of the production and manufacturing of iron and steel."

Ruling of the Court Thereon (Record p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 159b] Eleventh. The Trial Court erred in dismissing appellant's ninth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

9th Exception and Finding Involved Therein
(Record, p. 704a)

"9. The Court erred in its 24th finding of fact, which reads:

" '24. The territorial limits of the township and the boroughs included therein for coal tax purposes heretofore have been defined as the limit, boundaries, or zone for valuation purposes, and no attempt has been made in Greene County or in any other county of Pennsylvania, or elsewhere, so far as the evidence in this case goes, to establish any other zone for tax valuation purposes, than the township lines.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

[fol. 160b] Twelfth. The Trial Court erred in dismissing appellant's tenth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

10th Exception and Finding Involved Therein
(Record, p. 704a)

"10. The Court erred in its 25th finding of fact, which reads:

" '25. The natural arrangements of the townships in Greene County, as will be observed by the map in evidence, create substantially four natural zones for the valuation of coal lands, the first zone including Morgan, Jefferson, Cumberland, Greene and Monongahela Townships, and the

boroughs included therein. The coal within these zones is more or less accessible to river transportation and railroad transportation, it being admitted that the coal immediately along the river front is, by reason of its proximity to both methods of transportation, more valuable than the back coal throughout the townships in this zone. The second zone is made up, beginning at the north, by the townships of Washington, Franklin, Whiteley, Perry and Wayne. The third zone is composed, beginning at the north, by the townships of Morris, Center, Jackson and Gilmore; and the fourth zone is composed of the townships of Richhill, Aleppo and Springhill.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due con- [fol. 161b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Thirteenth. The Trial Court erred in dismissing appellant's eleventh exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

11th Exception (Record, p. 705a)

,"11. The Court erred in saying in its 26th finding of fact that the purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines."

26th Finding (Record, p. 543a)

"26. Purchasers of coal and the price of virgin coal have been governed very generally in the past by township lines and it is recognized that the value of coal decreases as you

go west from the Monongahela River. Some slight differences and increase in price within the zones outlined [fol. 162b] are due to advantages in the way of transportation or nearness to transportation by river or rail already available."

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Fourteenth. The Trial Court erred in dismissing appellant's twelfth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

12th Exception and Finding Involved Therein (Record, p. 705a)

"12. The Court erred in so much of its 28th finding of fact, which reads:

"'* * * The value of coal lands at present valuations is not so widely divergent within the boundaries of any given township as to require the adoption of a lesser unit of valuation than the township. When the coal is operated, the difference in the value that will then exist [fol. 163b] as between active coal and coal not being operated, can very equitably be taken care of by an increase in acreage value at the place of operation, including the value of the mining equipment and mine houses belonging to the operator.'"

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Fifteenth. The Trial Court erred in dismissing appellant's twelfth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

12th Exception and Finding Involved Therein (Record, p. 706a)

"13. The Court erred in its 29th finding of fact, which reads:

" '29. The Commissioners, in revising and equalizing the assessments on the Pittsburgh vein of coal, did take [fol. 164b] into consideration the possibility that the coal in Wayne and Perry Townships might not be operated for many years, and while they did not employ any experts to examine the coal measures and make recommendations as to the value, they did discuss the coal values with experts, attorneys for the appellant company and with operators of other coal tracts in Greene County, and they did have a practical knowledge such as they could acquire in the limited time they had, in which to make the assessment, and they did not discriminate unfairly against the appellant company in placing a value on its coal in Perry and Wayne Townships.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719 a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Sixteenth. The Trial Court erred in dismissing appellant's fourteenth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

[fol. 165b] 14th Exception and Finding Involved Therein (Record, p. 706a)

"14. The Court erred in its 32nd finding of fact which reads:

"'32. The suggestion by the engineers and experts testifying on behalf of the appellant company that the township be divided into zones three miles in width, commencing with the Monongahela River and running west, based upon the theory that the coal would be or should be operated in units of 4000 acres, and that it will not be removed from the front zone under a period of from ten to twenty years, and that that development will not result in the movement of any coal from Greene Township to the rear end of Cumberland Township for thirty or forty years, is not practical, and an attempt to divide the coal into zones other than by township lines under the advice of experts and engineers, would result in unreasonable expense and delay, and probably in more litigation than trying to adjust the valuations on township lines under the system now followed'."

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 166b] Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Seventeenth. The Trial Court erred in dismissing appellant's fifteenth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

15th Exception (Record, p. 707a)

"15. The Court erred in its 33d finding of fact in so far as it determines the value of exceptant's entire holdings

in Perry Township, based upon the sale of four separate tracts of coal out of the entire acreage in the township."

33rd Finding (Record, p. 546a)

"33. The testimony taken upon the hearing of this appeal discloses that appellant is the owner of a contiguous block of 3126 acres of coal of the Pittsburgh or river vein in Perry township of the total taxable value of $343,860.00; that the most recent sale or sales of coal of said vein in said township was the sale of the 'Headley Heirs' coal and the sale of the 'Osborne Wade' coal, 'Eli Pethtel' coal and 'Kinsey John' coal, all which coal of said vein was sold at a price in excess of double the assessed valuation as fixed by the county commissioners upon all the coal of said vein in Perry township."

[fol. 167b] Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Eighteenth. The Trial Court erred in dismissing appellant's sixteenth exception to the findings of fact, which exception, finding, the decision of the Court thereon and exception to such decision are as follows:

16th Exception and Finding Involved Therein (Record, p. 707a)

"16. The Court erred in its 36th finding of fact which reads:

" '36. The Board of Revision considered the prices at which coal was sold at the most recent sales prior to this triennial assessment, in connection with all the other mat-

ters affecting market value, such as location, transportation, future needs, cost of operation, etc., the condition of the coal market and the depreciation in the prices of all classes of real estate within the county, and this in connec- [fol. 168b] tion with other evidence, is more persuasive of value at the time of the assessment than any speculative feature such as future needs, rate of development, and cost of transportation, all of which were considered by appellant and its engineers when the purchases were made, and entered into their ideas of what the coal was worth at the time.' "

Ruling — the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Nineteenth. The Trial Court erred in dismissing appellant's seventeenth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

17th Exception and Finding Involved Therein (Record, p. 708a)

"17. The Court erred in its 37th finding of fact which reads:

" '37. The coal of appellant is assessed at practically the [fol. 169b] same value and rate, and in substantial uniformity, with all classes of property and real estate throughout the county generally.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twentieth. The Trial Court erred in dismissing appellant's eighteenth exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

18th Exception and Conclusion Involved *Exception* (Record, p. 708a)

"18. The Court erred in its 4th conclusion of law which reads:

" '4. Notwithstanding the provisions of the law that property must be valued at its real or market value for the purposes of assessment, the Courts of this state have recognized as legal, assessments made by assessors and adjusted [fol. 170b] by Boards of Revision on a uniform ratio or a fractional decrease below actual values, and a ratio was adopted in this case by the assessors and the Board of Revision throughout Greene County; whereby assessments were made on a basis of fifty per cent of actual or market value, this basis being adopted by assessors uniformly with the exception of Wards 1 and 2 in the Borough of Waynesburg, where the assessors adopted a ratio of one-third.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *
By the Court:
A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-first. The Trial Court erred in dismissing appellant's nineteenth exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

19th Exception and Conclusion Involved Therein (Record, p. 708a)

"19. The Court erred in its 5th conclusion of law which reads:

[fol. 171b] " '5. The Board of Commissioners, in fixing and valuing appellant's Pittsburgh or River vein of coal lying within the various townships, did not act arbitrarily and without due regard to the facts necessary and essential to the proper determination of the valuations.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-second. The Trial Court erred in dismissing appellant's twenty-first exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

21st Exception and Conclusion Involved Therein (Record, p. 709a)

"21. The Court erred in its 7th conclusion of law, which reads:

" '7. The Commissioners have not imposed upon appel- [fol. 172b] lant in this case, as owners of coal in Greene Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •
By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-third. The Trial Court erred in dismissing appellant's twenty-second exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

22nd Exception and Conclusion Involved Therein (Record, p. 709a)

"22. The Court erred in its 8th conclusion of law, which reads:

" '8. The Commissioners, acting as a Board of Revision and Equalization, have performed their duty with [fol. 173b] reasonable care and skill and have assessed the Pittsburgh or River Vein of coal with respect to township lines and have taken into consideration the various elements, which under the Statutes and decisions of the Supreme Court of Pennsylvania, should be determined before fixing the final value upon the coal of appellant so assessed.' "

Ruling of the Court Thereon (Record p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, • • •
By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-fourth. The Trial Court erred in dismissing appellant's twenty-third exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

23rd Exception and Conclusion Involved Therein (Record p. 710a)

"23. The Court erred in its 9th conclusion of law, which reads:

" '9. The Pittsburgh or River vein of coal underlying [fol. 174b] lands throughout Greene County is not subject to any servitude upon the surface of the land over the said coal for roads and highways, as recognized by the laws of Pennsylvania, which allow a reduction of six per cent on acreage assessed for taxation due to the servitude of roads and highways, and consequently is not entitled to a deduction of six per cent on its total acreage for assessment of taxes. While this deduction has been allowed to farmers and original owners who still retain the coal underlying the surface of their lands, it is not properly allowed on the coal, and whether the coal is actually severed by deed and is in the hands of different owners, or is severed for the purpose of taxation, and in the hands of the original owners, no reduction of six per cent should be allowed on the actual acreage of the coal assessed, and the appellants are not entitled to a deduction of six per cent on their total acreage as exempt from taxation.' "

Ruling of the Court Thereon (Record p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

[fol. 175b] Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-fifth. The Trial Court erred in dismissing appellant's twenty-fourth exception to the conclusions of

law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

24th Exception and Conclusion Involved Therein (Record, p. 710a)

"24. The Court erred in its 10th conclusion of law, which reads:

" '10. Having regard to the fifty per cent ratio used by the assessors and Board of Revision throughout the county, the Court is of opinion that while coal of the appellant might have placed on it a market value slightly higher than front coal in the same township belonging to operating companies, that the assessed value of appellants property as compared with assessed values of all classes of property throughout the county, is not relatively higher than other values but is practically, uniform, equitable and just.' "

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due con- [fol. 176b] sideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record, p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-sixth. The Trial Court erred in dismissing appellant's twenty-fifth exception to the conclusions of law, which exception, conclusion, the decision of the Court thereon, and exception to such decision are as follows:

25th Exception and Conclusion Involved Therein (Record, p. 711a)

"25. The Court erred in its 11th conclusion of law, which reads:

" '11. The burden of proof is on appellant to establish that the valuations fixed by the Board of Revision as expressed in the resolution of April 26, 1928, are unjust, inequitable, discriminatory and lack uniformity and that ap-

pellant's coal is assessed and valued at a higher relative rate than other classes of real estate in Greene County. The Court, after a careful consideration of the record of this appeal, concludes that appellant failed to prove these matters and, therefore, the Court concludes that the assessment and valuation of all property taxable by law for [fol. 177b] county purposes as fixed by the Board of Revision conforms to the constitutional provisions and legislative enactments and is uniform and conformable to law.' "

Ruling of the Court thereon (Record p. 719 a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants' exceptions noted and bill sealed.

A. H. Sayers. (Seal.)"

Twenty-seventh. The Trial Court erred in dismissing appellant's twenty-sixth exception to the findings of fact, which exception, finding, the decision of the Court thereon, and exception to such decision are as follows:

26th Exception and Finding involved therein (Record p. 712a)

"26. The Court erred in its 4th finding of fact, which reads:

" '4. This appeal should be dismissed at the cost of the appellant.' "

Ruling of the Court Thereon (Record p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con- [fol. 178b] clusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)

Twenty-eighth. The Trial Court erred in dismissing appellant's 27th exception to the entering of the nisi decree, which exception, nisi decree, the decision of the Court thereon, and exception to such decision are as follows:

27th Exception and Nisi Decree involved therein (Record p. 712a)

"27. The Court erred in entering the following nisi decree:

"'Nisi Decree

"'and now, January 13th, 1930, upon consideration of the foregoing case, it is ordered, adjudged and decreed as follows:

"'The appeal of the Greene County Coal Company from the decision of the Board of Commissioners of Greene County sitting as a Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant. The Prothonotary shall give [fol. 179b] notice of this nisi decree to the parties or their counsel of record, and unless exceptions are filed thereto within thirty days, said decree shall be entered as a final decree.

"'Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge.

Attest: Morgan Henderson, Prothonotary.'"

Ruling of the Court Thereon (Record, p. 719a)

"And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and conclusions of the Court, the exceptions are dismissed, * * *

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants' exceptions noted and bill sealed.
A. H. Sayers. (Seal.)"

Twenty-ninth. The Trial Court erred in entering its final order dated May 31, 1930, which order and the exception thereto are as follows:

Final Order (Record, p. 719a)

"Final Order

And now, May 31, 1930, after argument and due consideration of the exceptions filed to the findings and con-[fol. 180b] clusions of the Court, the exceptions are dismissed, and it is ordered, adjudged and decreed that the appeal of the Greene County Coal Company from the decision of the Board of Commissioners of Greene County, sitting as Board of Revision and Equalization of assessments of property in said county from the triennial assessment for the year 1928 in this case, is dismissed at the cost of the appellant.

"Ordered, adjudged and decreed accordingly.

By the Court:

A. H. Sayers, President Judge."

Exception (Record p. 719a)

"Same day, appellants except to the ruling of the Court on exceptions, and to its entry of the foregoing order, and ask that a bill of exceptions be sealed.

"Same day, appellants' exceptions noted and bill sealed
A. H. Sayers. (Seal.)"

In Supreme Court of Pennsylvania

Opinion

Schaffer, J.:

These seven appeals by Cumberland Coal Company, Henry A. Phillips, Piedmont Coal Company and Greene County Coal Company will be disposed of in a single

opinion, as they involve, when reduced to final analysis, but one question.

The proper assessment of coal lands has been one of the most perplexing governmental questions with which the [fol. 181b] courts of this Commonwealth have had to deal, as our reports and those of the lower courts within whose districts such lands are located will show. Tax assessments are not a matter of formula; they are a matter of judgment in each individual case. "Common sense and practical everyday business experience are the best guides for those intrusted with the administration of tax laws:" Harleigh Realty Company's Case, 299 Pa., 385, 390.

Appellants' Counsel state their position thus: Township assessors and county commissioners sitting as a board of revision may not assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values where it is undisputed that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of nine or ten miles. Our answer must be that they may so assess it, and the courts may not alter individual assessments, provided they do not fix the value at a figure in each instance greater than the fair market value of each owner's property, or, as in the cases before us, higher than the percentage of value, here fifty per cent. uniformly fixed throughout the county.

[fol. 182b] None of the appellants has shown that its or his property in the market is not worth double the assessment fixed by the county commissioners and court below. As they fixed fifty per cent of market value as they conceived it to be, appellants without showing a less value for their properties have no standing to complain. It does not avail a landowner challenging an assessment to show that some other properties are assessed at less than their market value or its proportion as fixed by the assessing authorities, unless he can show that his assessment is greater than fair market value or proportionately so. It is not for the courts to raise assessments of properties alleged to be assessed too low, as to which no appeals have

been taken, we deal only with those before us on appeal, to determine whether they are above the market value line. "In the case at bar appellant points to the fact that the lands of some of its neighbors, although just as valuable as those under consideration, have been assessed at a much lower valuation. For this reason it is urged that there was an unfair discrimination in the valuations to the prejudice of appellant and in disregard of the rule requiring uniformity. In some of the instances called to our attention the difference in valuation is so marked as to require explanation by the assessors who made the assessments and whose duty it was under the law to make and return a just [fol. 183b] valuation of each tract in their respective districts. But, if assessors fail to do their duty by making an assessment of some particular tract or tracts too low and the board of revision fails to equalize the valuations upon a uniform basis, the courts can only give relief in cases brought before them on appeal. * * * and have no power to revise and equalize assessments generally. * * * Appellant complains * * * because some other tracts of land in the neighborhood, the valuations of which were not appealed from, were assessed below the uniform standard. In other words, not by reason of failure to assess appellant's lands according to the uniform rule applied generally in the district, but because some tracts in the neighborhood were assessed below that standard of valuation. We agree with the learned court below that this position is not tenable. * * * courts can only compel a valuation of the lands under consideration to be made upon the basis of general uniformity in the district:" Mineral Railroad & Mining Co. v. Northumberland County Commrs. (No. 1) 229 Pa. 436, 452. The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be.

We think appellants' able counsel do not seriously con- [fol. 184b] tend for the second proposition which they advance; that because the assessing authorities made an allowance to farm lands of six per cent. of their acreage for the burden of public roads, a similar allowance should be made for their clients' coal three or four hundred feet

below the surface. To so determine would require an entry into the domain of the ridiculous. We do not pass upon the question whether such allowance should have been made in those instances where it was. There are no appeals as to these specific properties before us.

The decrees of the court below are affirmed at the cost of appellants.

[fol. 185b] In Supreme Court of Pennsylvania

Petition for Reargument

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of Pennsylvania:

Your petitioners, Cumberland Coal Company, Piedmont Coal Company, Greene County Coal Company and Henry A. Phillips, appellants in the above entitled seven cases, respectfully pray that your Honorable Court grant a reargument thereof. Your petitioners allege as grounds for a rehearing the following points, reasons and arguments:

1. The opinion of your Honorable Court constitutes an abandonment of the uniformity rules heretofore applied in accordance with the constitutional mandate.

Frankly speaking, the opinion of your Honorable Court in these cases came as a bombshell to your petitioners. We have evidently failed to properly present to this Court the seriousness of the situation here involved, and the nature of the action of the Assessors and County Commissioners sitting as a Board of Revision in these cases, for we are confident that if the undisputed facts in this connection are understood by this Court, the action of the Commissioners could not possibly be permitted to stand, unless it [fol. 186b] was the intention of this Court to abandon the rules of uniformity as heretofore laid down by this Court in accordance with the mandate of the Constitution, and to depart from the directions of the statutes of the State of Pennsylvania dealing with the method of assessing properties for taxation.

The serious situation existing in the anthracite field was presented to this Court in Lehigh & Wilkes-Barre Coal Company's Assessment, 298 Pa. 294. We have no hesita-

tion in saying that the conditions prevailing in the bituminous coal field are just as serious, and probably more serious than those existing in the anthracite field. As a result of the high assessments which have been made upon the coal of various owners in the various counties in the southwestern part of Pennsylvania and in the northern counties of West Virginia adjoining Pennsylvania, a very large number of coal owners have been forced to, or have deliberately permitted, their properties to be sold at tax sales. It is a matter of common knowledge that bank after bank in this regious has failed as a result of the dire conditions in the bituminous coal industry, and the economic distress of the great majority of individuals is likewise well known.

In the face of these distressing conditions which have been growing worse during the past several years, the assessments in these cases represent increases in 1928 over the assessments theretofore existing.

[fol. 187b] Section 1 of Article IX of the Constitution of Pennsylvania provides:

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and shall be levied and collected under general laws."

The taxes here involved are the county tax, road tax and school tax. "Territorial limits of the authority levying the tax" here means in the case of county taxes, the County; in the case of road taxes, the Township; and in the case of school taxes, the School District, the lines of which coincide with those of the several townships. It is therefore requisite that every sort of property within each of the townships shall be taxed at the same rate and in the same proportion to its actual value. This view was laid down by this Honorable Court in the case of D. L. & W. R. R. Company's Tax Assessment (No. 1) 224 Pa. 240, 244 et seq., as follows:

" * * * The valuation of the property of one owner is so closely related to the valuation of the property of all other owners in the same district that the court must be advised as to the general valuation of other properties in order to determine what is a just and uniform valuation of

the property in question. Each taxpayer, no matter how great or small, has a right to demand that his property [fol. 188b] shall be assessed upon the basis of a uniform valuation of other properties belonging to the same class and within the territorial limits of the authority levying the tax, and it is the duty of all the authorities dealing with this subject to administer the law in a spirit to produce as nearly as may be uniformity of result. Coal lands are the taxable subjects dealt with in this proceeding. They are real estate, and for purposes of taxation must be treated as belonging to the same class of subjects as other real estate located within the same district and being subject to the same tax authorities. It is apparent, therefore, that in determining what the assessed value of the coal lands of appellant should be due regard must be had for the valuation of all other real estate in the same district. * * * It was also assumed and properly so, that in order to make the valuation of appellant's property uniform with the valuation of other real estate it would be necessary that the ratio of actual to assessed value should be the same upon all real estate, including coal lands, within any district whose authorities were attempting to levy the tax. * * *

"* * * The assessed valuation should as nearly as possible represent the actual value, but it must be uniform no matter whether the proper standard is followed or not. It is a well-known fact that from the beginning of our state government to the present time in nearly every section of the commonwealth the assessed value of property [fol. 189b] is ridiculously low as compared with actual value. No doubt the framers of the constitution had this thought in mind when they wrote into the fundamental law that all taxes must be uniform on the same class of subjects. It will not do to assess farm lands at one-fifth their actual value, dwelling houses at one-third, manufacturing establishments at one-half, and coal lands at full value. The constitution says the valuation must be uniform on the same class of taxable subjects and real estate is a taxable subject of a particular class, and coal lands are real estate, hence the rule of uniformity must be applied to all kinds of real estate as a class."

Similarly in Lehigh & Wilkes-Barre Coal Company v. Luzerne County, 225 Pa. 267, 271, this Court said:

"* * * When the attempt is made, as it too frequently is made, to assess one kind of real estate at full value, another at half value and another at third value, or even less in some instances, the cry of unjust discrimination is raised and resistance or protest surely follows. Such a method of valuation is repugnant to the constitutional provision requiring uniformity. A uniform standard of valuation must be adopted and a uniform tax rate must be applied. This is what the framers of the constitution meant, [fol. 190b] and in aid of this principle the legislature in 1889 provided that the courts on appeal shall have due regard for the valuation of other real estate in the same district."

In order to see the nature and effect of the plan of assessment followed by the Assessors and the Board of Revision in these cases, let us examine the findings of the Court, and the location of the proporty of the several owners in Cumberland Township.

The Trial Court found in its Fourteenth Finding (Record, p. 436a):

"14. The coal along the Monongahela River on the east of Cumberland Township and for a distance west from the river of approximately three miles, because of its accessibility to market both by river and rail, and because of the fact that it was being actively operated, is worth twice as much as the balance of the coal in said township from the three mile line to the rear of the township, and nearly all of the coal belonging to the Cumberland Coal Company in Cumberland Township is in that part of the township beginning at a line approximately parallel to the Monongahela River, two and one quarter miles west of the river, and extending west in the township to its boundary, a distance of approximately six miles" (i. e. nine miles from the river).

[fol. 191b] Likewise in its 30th Finding (Record, p. 441a), the Trial Court found:

"30. The Pittsburgh or River vein of coal of appellant lying a distance of three miles west of the Monongahela

River and extending back a distance of three miles, or six miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly."

These findings of the Court that the coal in Cumberland Township along the river within the three mile limit is worth twice as much as the balance of coal in Cumberland Township, is in accordance with the views expressed by the County Commissioners themselves at the hearing. Thus Mr. J. N. Scott (Record, p. 256a), Chairman of the Board, on cross examination, in answer to a question by Mr. McClay as to the value of the front coal, testified:

"The front coal might get very valuable. It certainly would not be less than $1000. It would depend on circumstances. By carrying the front at $1000, and the back at $500, it would get an average of $750.00."

[fol. 192] Similarly Mr. Paul Debolt, another of the Commissioners being on the stand (Record, p. 268a), upon examination of his own counsel, testified as follows:

"Q. At the time you were cross examined by Mr. McClay about the price of the front coal in Cumberland Township, I did not catch what you said—how much an acre it was?

"A. I think that coal in the front should be worth at least $1000 an acre.

"Q. The average of the Township, $600?

"A. Yes."

From an examination of map, Exhibit B, it is apparent that the coal of all the other owners of coal in Cumberland Township lies wholly within, or substantially wholly within, the three mile limit, except a minor part of the holdings of Buckeye Coal Company which lies in the rear of the Township and is surrounded by the coal of Cumberland Coal Company. It is further apparent from an examination of the map that the coal lying within three miles of the river which the Court finds is worth twice as

much as that lying back of the three mile limit, comprises practically one-half of the Township. This is corroborated by County Commissioner Scott in the testimony stated above where, in arriving at his average, he treats the two [fol. 193b] parts as being equal. Thus the effect of assessing all the property in the Township at the same value is to make appellant Cumberland Coal Company pay taxes upon a proportion of actual value which is double the proportion of actual value upon which the other taxpayers in the Township pay their taxes. If we are correct in our construction of the constitutional provision, and it requires road and school taxes to be uniform within each Township, then these assessments are clearly illegal.

Unless we misconceive the opinion of the Court, it authorizes the assessment of the coal of appellant, Cumberland Coal Company, comprising substantially one-third of the coal in Cumberland Township, at substantially 50% of what the Court regards as its actual value, and the assessment of the coal of the other owners in the Township at substantially 25% of the value of such coal. We are appreciative of the fact that uniformity is a practical adjustment and that substantial uniformity is all that can be exacted. But surely this is not substantial uniformity. It may be noted that the United States Supreme Court, in the case of Greene v. Louisville & I. R. Co., 244 U. S. 499, 61 L. Ed. 1280, 1287, in speaking of the requirement of the uniformity provisions of the state constitution of Kentucky, expressed the opinion that there would be a lack of uniformity if certain property were assessed at 75% of actual value, and other property at from 52% to 60% of its actual value.

[fol. 194b] II. The opinion of your Honorable Court seemingly approves, and yet does not mention, the plan of making assessments followed by the assessors and Board of Revision, which is manifestly illegal.

We believe that it is highly important not only to the appellants but to every bituminous coal owner in western Pennsylvania, that this Honorable Court should express its opinion with regard to the method of making assessments in these cases. What was that method of assessment?

The members of the Board of Revision were frank to admit that they made no attempt whatever to value sepa-

rately the tracts of the several owners lying in different parts of the several townships, but considered the whole of each township as a separate unit for purposes of valuation, as appears from the Resolution of the Board of Revision assessing all the property in the County (Record, p. 38a), and from the following excerpt from the testimony of Mr. J. N. Scott, the Chairman of the Board of Revision:

"Q. Mr. Scott, it is true, I believe, that in fixing this valuation you adhered entirely to township lines?
"A. Yes, sir.
"Q. You fixed the same valuation of coal on the whole of each township?
[fol. 195b] "A. Yes, sir" (Record, p. 55a).

Seemingly, it was the theory of the Board that they had fulfilled their duty under the law if their asesssment was based on a fair average value for the township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence. Thus Mr. J. N. Scott, Chairman of the Board testified (Record, p. 251a):

"Q. What, in your opinion, is the fair market value of the Pittsburgh or Riven vein of coal in Cumberland Township per acre at public sale after due and public notice?
"A. Not less than $600.00.

Cross-examination.

By Mr. McClay:

"Q. That testimony of yours extends to the whole township, whether it abuts upon the river or extends eight miles back to the Cumberland Township line?
"A. That is the average of the Township."

(Record, p. 256a):

"Q. Now, Mr. Scott, I am trying to get at what pur-
[fol. 196b] chasers would want and what would enter their mind in making purchases of coal. You have talked about the average price of $600. Will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth.

"A. The front coal might get very valuable. It certainly would not be less than $1,000.00. It would depend on circumstances. By carrying the front at $1,000.00 and the back at $500.00, it would get an average of $750.00."

Similarly Mr. Paul Debolt, another of the Commissioners, being on the stand (Record, p. 264a):

"Q. What, in your opinion, Mr. Debolt, is the market value of the Pittsburgh or River vein of coal in Cumberland Township as public sale after due public notice?

"A. I think at least $600.00 is the average price" (Record, p. 268a).

"Q. At the time you were cross-examined by Mr. McClay about the price of the front coal in Cumberland Town-[fol. 197b] ship, I did not catch what you said—how much an acre it was?

"A. I think that coal in the front should be worth at least $1,000.00 an acre.

"Q. The average of the township $600.00 an acre?

"A. Yes."

Manifestly the Board of Revision could not lawfully, as they did in all these cases, base their valuations on mere township lines, and their error is strikingly demonstrated by their attempt to equalize differences in values by assessing an "average value" throughout the township, without regard to differences in ownership. The failure of the Board of Revision, and of the Court below to comprehend the requirements of uniformity is further demonstrated by the assessments generally throughout the County being made on a basis of 50% of actual or market value, while property in Wards 1 and 2 of the Borough of Waynesburg is found by the Court (4th Finding of law, Record p. 447 a) to be assessed at only one-third of such actual value.

Is it possible that this plan of basing values entirely upon arbitrary Township lines, and reaching such Township values by an averaging process, is in accordance with the mandate of Section 4 of the Act of May 5, 1841, P. L. 393 (Pa. Statutes, 1920, Section 20590), which provides that—

[fol. 198b] "Assessors shall value all objects of taxation according to the actual value thereof, and at such rates and prices for which the same would *separately* bona fide sell." (Underscoring ours.)

The meaning of this provision of the statute was only very recently considered by this Court in the case of Reading Coal and Iron Company's Assessment, 290 Pa. 187. In considering the question "whether (it is) proper, in fixing the market values, to consider tracts separately for assessment purposes without regard to the fact that they were contiguous and part of a mining operation under one ownership," this Court, speaking through Chief Justice Frazer (then Mr. Justice Frazer), said:

"As to the first question, section 4 of the Act of May 15, 1841, P. L. 393, requires the assessors to value all objects of taxation 'according to the actual value thereof and at such rates and prices for which the same would *separately* bona fide sell.' Section 13 of the Act of July 27, 1842, P. L. 441, makes it the duty of the board of revision of taxes in each county to examine the returns of the assessors and inquire whether assessments have been made in conformity to law and determine if the property has been valued at a sum 'not less than the same would bring after full public [fol. 199b] notice, at a public sale, *supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual company or corporation only, were to be sold.' Under the above statutes, it is the market value of the separate tracts if sold at public sale after due notice, which is the basis for determining the value of real estate for the purpose of assessment.* Phila. & Reading Coal & Iron Co. v. Northumberland County Commissioners, 229 Pa. 460, 466, 468; Del., L. & W. R. R. v. Luzerne County Commissioners, 245 Pa. 515, 518.

"Consequently, *it was the duty of the court below to value each separate tract at the price it would bring at public sale after due notice given.*" (Underscoring ours.)

The opinion of this Honorable Court filed in the present cases does not set forth what the plan of the assessors and Board of Revision was, and yet our entire case being directed to the validity of that plan rather than to the propriety of the individual assessments under it, we cannot, as appellees cannot, interpret the position of this Court as anything but an approval of the plan followed. This means that the highest court of Pennsylvania has said to the various assessors and county commissioners throughout the commonwealth: "You may make your valuations of coal

entirely dependent upon arbitrary township lines, without separately valuing the tracts of the separate owners, and [fol. 200b] you may, if you so desire, value all coal in each township at an average value thereof, disregarding differences of ownership." These instructions are so revolutionary when the previous opinions of this Court are considered, that we do not believe the Court intended to give them, and yet they are an inescapable consequence of the opinion and decree of this Court, as filed.

If Mr. Justice Frazer spoke for the Court when he said that the Assessors and Board of Revision must value each tract separately, then how can the valuing of the coal of all the separate owners in an entire township at an average price be approved?

We have the utmost respect for the views and decisions of the Supreme Court of Pennsylvania. We believe that this Court does not intend to overturn its previous decisions—particularly those dealing with the method of valuing real estate for purposes of taxation—without some reference to such previous cases. And we doubt whether the Court intended in its opinion to refrain from mentioning the plan of assessment against which the appeals were directed and in pursuance of which the assessments here involved were made. We earnestly pray that your Honorable Court may reconsider its decision, and may at least incorporate in its opinion a statement of the plan followed by the Assessors, with respect to which there is no dispute, and may then express its judgment upon such plan. Taxa- [fol. 201b] tion is a matter so vital to every citizen, and in times like these, the taxation of coal lands is so much a matter of economic life or death to the owners of coal property, that an expression of view by this Court upon the real issues here involved is of the utmost importance to the people of the western part of Pennsylvania.

The question at issue is directly raised by the first assignment of error in each of the seven separate appeals involved in this case, as well as in other assignments of error in each of them.

The opinion of this Honorable Court suggests that the Court regarded the point involved as being whether appellants might challenge their assessments by showing that other properties are assessed at less than their market value. In calling attention to the assessments of the Cruci-

ble Fuel Company, the Buckeye Coal Company, and other taxpayers, it was not the intention of appellants to form a basis of reversal. Appellants intended to direct their appeal and their argument to the plan followed by the Assessors, and approved by the Board of Revision and the Court. It was in pursuance of that plan that the assessments here involved were made, not separately, but along with all other property in each township upon an average value basis. We only cited the instances of the other taxpayers mentioned in order to demonstrate the inequality and illegality of the plan involved in these cases, and the resultant lack of uniformity. This Court apparently mis-[fol. 202b] conceived the aim of our argument and the purpose of mentioning the assessments not here involved. It is the contention of appellants that if the proper method of assessment had been followed, that is that the averaging process should include, in each township, only the coal of each separate owner, it would have resulted in an actual and substantial decrease in the value placed upon appellants' coal. The statement in the opinion of the Court that none of the appellants has shown that its or his property in the market is not worth double the assessment fixed by the County Commissioners and the Court below, would lose much of its apparent force if a proper method had been followed. It is apparent that the coal in one-half of the Township was not assessed at 50% of the market value, and if the same ratio had been applied to the coal of the appellants, the assessment of appellants' coal would have been at a much smaller figure.

III. The plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

If for no other reason a reargument should be granted in these cases in order that we may present to this Court the cases from which it is clear that the plan of assessment followed by the Assessors in these appeals is a violation of the Equal Protection clause of the Fourteenth Amendment [fol. 203b] to the Constitution of the United States. We are desirous of having this question presented to this Court before we carry these cases to the Supreme Court of the United States.

There are numerous decisions of the Federal Courts holding that a systematic plan of assessment which results in the assessing of the property of one owner at a larger percentage of its value than that of the other property owners in the taxing district is a violation of the Equal Protection clause of the Fourteenth Amendment.

In the case of Sioux City Bridge Co. v. Dakota County, Nebraska, 260 U. S. 441, 67 L. Ed. 340, the Supreme Court held that a bridge company is denied the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution, by the assessment of its property at full value while the other property in the county is assessed at only fifty-five one hundredths of its value. The Supreme Court of the State of Nebraska had taken the position that the parties before it could not complain because other properties were assessed at less than the full value where the law required all property to be assessed at the true value, and that the proper remedy was to have the other property assessed at its true value. In reversing the Supreme Court of Nebraska, and remanding the case for further proceedings, Chief Justice Taft said:

[fol. 204b] "In the case of Sunday Lake Iron Co. v. Wakefield Twp. 247 U. S. 350, 352, 353, 62 L. Ed. 1154-1156, 38 Sup. Ct. Rep. 495, this court said:

" 'The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional, systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. Raymond v. Chicago Union Traction Co., 207 U. S. 20, 35, 37, 52 L. Ed. 78, 87, 88, 28 Sup. St. Rep. 7, 12 Ann. Cas. 757.' Analogous cases are Greene v. Louisville & Interurban R. Co. 244 U. S. 499, 516-518, 61 L. Ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917E, 88; Cummings v. Merchants' Nat. Bank, 101 U. S. 153, 160, 25 L. Ed. 903, 905; Taylor v. Louisville & N. R. Co. 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, 372, 374; Louisville & N. R. Co. v. Bos-

[fol. 205b] worth, 209 Fed. 380, 452; Washington Water Power Co. v. Kootenai County, 270 Fed. 369, 374.

"The charge made by the Bridge Company in this case was that the state, through its duly constituted agents, to wit, the county assessor and the county board of equalization, improperly executed the Constitution and taxing laws of the state, and intentionally and arbitrarily assessed the Bridge Company's property at 100 per cent of its true value, and all the other real estate and its improvements in the county at 55 per cent.

"The supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except 'to have the property assessed below its true value raised, rather than to have property assessed at its true value reduced.' The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view [fol. 206b] as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of Taylor v. Louisville & N. R. Co. 31, C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in Greene v. Louisville & Interurban R. Co. 244 U. S. 499, 516-518, 61 L. Ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917E, 88. The conclusion in these and other Federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose

property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a de- [fol. 207b] parture from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska Supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

In Greene v. Louisville & I. R. Co., 244 U. S. 499, 61 L. Ed. 1280, 1285, in pointing out that a tax law, valid in itself, may be so administered by the taxing authorities as to violate the uniformity requirements of the state and federal constitutions, the United States Supreme Court said:

"'* * * A valid law may be wrongfully administered by officers of the state, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act [fol. 208b] under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual.' In Raymond v. Chicago Union Traction Co., 207 U. S. 20, 38, 52 L. ed. 78, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757, the court upheld the right of action in a Federal court to restrain the collection of taxes that had been assessed at a different rate and by a different method from that employed with respect to other taxpayers of the same class, in defiance of the provisions of a constitutional statute that required equalization, and also in denial of the equal protection of the laws within the meaning of the 14th Amendment."

In Railroad & Teleph. Cos. v. Board of Equalizers, 85 Fed. 302, Judge Clark said:

"Conceding, for the purpose of testing the soundness of this proposition, that the constitutional term, 'according to its value,' means the same thing as 'at its full value,'

the contention of the state then, stated with reference to its effect, is this: That it may assess the property of A at its full value, in obedience to the Constitution, and the property of D at one half of its value, in violation of the Constitution, and, when A complains that the result has [fol. 209b] been to violate the Constitution in respect to the equality provision, the answer is that the objection is not open to A, because he is taxed on no more than the full value of his own property, and that he must pay 50 per cent more on the same actual value than D. Now, it will certainly be admitted that the simple statement of such a proposition suggests its utter untenableness. If decisions may be found which apparently uphold a result such as this, they promulgate a doctrine which cannot be accepted as good law."

That appellants in these cases are made to pay a disproportionate amount of the cost of government is clear. It was just such discrimination as that here involved that the uniformity provision of the State Constitution and the Fourteenth Amendment to the Federal Constitution were intended to prevent.

While this petition has in certain aspects confined itself to a discussion of the facts in Cumberland Township, the system followed by the Assessors was the same in all the Townships, and the question of the uniformity of the assessments, made in pursuance of the plan followed by the Assessors and Board of Revision, and approved by the Court below, is, in its broader aspects, the same in all of the Townships. For this reason we have deemed it unnecessary to elaborate here the situation in each of the [fol. 210b] Townships involved, although our Brief filed at the previous argument discusses the question as applied to each separate township involved.

For the reasons herein set forth we earnestly pray that this Honorable Court may grant to your petitioners a reargument of the above entitled cases.

And your petitioners will ever pray.

Respectfully submitted.

Kyle & Reinhart, Reed, Smith, Shaw & McClay, Attorneys for Appellants. Samuel McClay, W. J. Kyle, Carl E. Glock, Arthur B. Van Buskirk, of Counsel.

IN SUPREME COURT OF PENNSYLVANIA

ORDER REFUSING REARGUMENT

Dec. 8, 1930.
Reargument refused.

Per Curiam.

IN SUPREME COURT OF PENNSYLVANIA

ORDER MODIFYING ORDER REFUSING REARGUMENT

And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate [fol. 211b] the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused.

Per Curiam.

[fol. 212b] IN SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

In re Appeals of CUMBERLAND COAL COMPANY et al. from Triennial Assessments for 1928 of Coal Lands in Greene County, Pa.

No. 152, March Term, 1930
No. 154, March Term, 1930
No. 155, March Term, 1930
No. 156, March Term, 1930
No. 159, March Term, 1930
No. 160, March Term, 1930
No. 161, March Term, 1930

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 23, 1930

To Pier Dannals, Esq., Prothonotary, Supreme Court of Pennsylvania.

SIR: Please prepare a transcript of the record of the above numbered seven cases to be used in applications to

the Supreme Court of the United States for writs of certiorari in each of said cases, the transcript to consist of:

The record of the seven cases in the Court of Common Pleas of Greene County, Pa., as printed and filed in the Supreme Court of Pennsylvania.

The entire record of said seven cases in the Supreme Court of Pennsylvania.

Reed, Smith, Shaw & McClay, Attorneys for Appellants.

December 23, 1930.

[fol. 213b] [File endorsement omitted.]

[fol. 214b] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 215b] Judge's certificate to clerk omitted in printing.

Clerk's certificate to judge omitted in printing.

[fol. 216b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 687

CUMBERLAND COAL COMPANY, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

[fol. 217b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 688

CUMBERLAND COAL COMPANY, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 218b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 689

CUMBERLAND COAL COMPANY, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 219b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 690

CUMBERLAND COAL COMPANY, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 220b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 691

HENRY A. PHILLIPS, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 221b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 692

PIEDMONT COAL COMPANY, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 222b] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1930

No. 693

GREENE COUNTY COAL COMPANY, Petitioner,

vs.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA

ORDER ALLOWING CERTIORARI—Filed March 9, 1931

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 35,609, 35,610, 35,611, 35,612, 35,613, 35,614, 35,615. Pennsylvania Supreme Court. Term

No. 687. Cumberland Coal Company, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania. Term No. 688. Cumberland Coal Company, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania, Term No. 689. Cumberland Coal Company, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania. Term No. 690. Cumberland Coal Company, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania. Term No. 691. Henry A. Phillips, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania. Term No. 692. Piedmont Coal Company, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania. Term No. 693. Greene County Coal Company, petitioner, vs. Board of Revision of Tax Assessments in Greene County, Pennsylvania. Petition for writs of certiorari and exhibit thereto. Filed January 31, 1931. File Nos. 35,609, 35,610, 35,611, 35,612, 35,613, 35,614, 35,615.

(539)

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Supreme Court of the United States

OCTOBER TERM, 1930

NOS. [redacted] 7 TO 13

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 152 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 154 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 155 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 156 March Term, 1930, in the Supreme Court of Pennsylvania.

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 159 March Term, 1930, in the Supreme Court of Pennsylvania.

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 160 March Term, 1930, in the Supreme Court of Pennsylvania.

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 161 March Term, 1930, in the Supreme Court of Pennsylvania.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, AND BRIEF IN SUPPORT THEREOF.

WILLIAM A. SEIFERT,
Counsel for Petitioners.

SAMUEL McCLAY,
W. J. KYLE,
CARL E. GLOCK,
ARTHUR B. VAN BUSKIRK,
Of Counsel.

SMITH BROS. CO. INC., LAW PRINTERS, 208-212 GRANT STREET, PITTSBURGH, PA.

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Supreme Court of the United States

OCTOBER TERM, 1930

NOS.....

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 152 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 154 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 155 March Term, 1930, in the Supreme Court of Pennsylvania.

No. ..... Re Appeal to No. 156 March Term, 1930, in the Supreme Court of Pennsylvania.

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 159 March Term, 1930, in the Supreme Court of Pennsylvania.

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 160 March Term, 1930, in the Supreme Court of Pennsylvania.

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

No. ..... Re Appeal to No. 161 March Term, 1930, in the Supreme Court of Pennsylvania.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, AND BRIEF IN SUPPORT THEREOF.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Cumberland Coal Company, Piedmont Coal Company, Greene County Coal Company, and Henry A. Phillips, respectfully represents:

Summary Statement of the Matter Involved.

These seven companion cases were tried together in the Court of Common Pleas of Greene County, Pennsylvania, argued together before the Supreme Court of Pennsylvania, and disposed of by that Court in a single opinion and order. Similarly, they are covered here by this single petition and brief.

The question presented is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The Statutes of Pennsylvania (quoted in the appendix to our brief) provide for the triennial assessment, at its "actual value", of all real estate in each county for purposes of taxation, and constitute the county commissioners of each county a "Board of Revision" to revise, correct, and equalize the valuations of all property returned by the assessors of their county, and to see that all property is "valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements, or the personal property of each individual, company or corporation only were to be sold." Upon the valuations so made county taxes are levied throughout each county, and various local taxes are levied by the taxing authorities of each separate township.

When the three Commissioners of Greene County, sitting as a Board of Revision, came to revise and equalize the triennial assessments for 1928, they pursued with respect to the valuation of the Pittsburgh or River vein

of coal the following plan: They assessed all the Pittsburgh or River vein of coal underlying the territorial limits of each separate township at the same value per acre* (R. 38 a, 39 a, 55 a; and see map Exhibit B inserted R. 393 a, and Finding 35, R. 444 a), in complete disregard of the admitted fact that, by reason of great differences in distance from river or rail transportation and by reason of other economic factors, the actual or market value of the coal per acre varied throughout each township, and in some instances the Pittsburgh or River vein of coal in one part of a township, belonging to one owner, had an actual or market value of as much as twice that of other coal of the same vein in the same township, belonging to other owners (Finding 14, R. 436 a; Finding 30, R. 441 a; Finding 15, R. 539 a).

From their testimony (R. 251 a, 252 a, 256 a, 264 a, 268 a), it was seemingly the theory of the Board of Revision that they had fulfilled their duty under the law if their assessment of coal per acre was based on the fair *average* value of the coal throughout the township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence.

Petitioners' appeals from the assessments to the Court of Common Pleas of Greene County were dismissed (R. 470 a, 519 a, 573 a, 608 a, 646 a, 683 a, 719 a). On November 24, 1930, the Supreme Court of Pennsylvania affirmed the decrees of the court below (R. 184 b) upon the ground that a landowner may not challenge his individual assessment by showing undervaluations of other properties in the taxing district (R. 182 b), and that his sole basis of redress must be that his individual property was assessed at a figure greater than its fair

*Excepting very small acreages surrounding actual operations, which they termed "active coal," and assessed at a uniform higher rate.

market value, or the percentage of such value generally fixed throughout the county (R. 183 b). The conclusion of the Supreme Court of Pennsylvania is concisely stated by it thus (R. 183 b):

> "The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market value of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

On December 2, 1930, your petitioners presented to the Supreme Court of Pennsylvania their petition for a reargument (R. 185 b) upon the ground, *inter alia*, that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 202 b); and on December 16, 1930, the Court entered the following order (R. 210 b):

> "And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused.
>
> PER CURIAM."

Reasons Relied on for the Allowance of the Writs.

1. The plan or method of assessment involved in these cases constitutes a systematic, arbitrary, and intentional discrimination by taxing officials in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The decision of the Supreme Court of Pennsylvania upholds the violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, to the injury of your petitioners.

3. The decision of the Supreme Court of Pennsylvania that the plan of assessment involved in this case does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, is in conflict with the decision of this Court in *Sioux City Bridge Company v. Dakota County, Nebraska,* 260 U. S. 441, and in other cases cited in petitioners' brief.

4. The question involved is one of very general concern.

Your petitioners, in the brief accompanying this petition, will elaborate upon both the foregoing facts and reasons for the allowance of the writs of certiorari.

WHEREFORE your petitioners respectfully pray that writs of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings

in the above entitled seven cases, and that the said decision and order of the Supreme Court of Pennsylvania may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

CUMBERLAND COAL COMPANY,
HENRY A. PHILLIPS,
PIEDMONT COAL COMPANY,
GREENE COUNTY COAL COMPANY,

By WILLIAM A. SEIFERT,
Counsel for Petitioner.

SAMUEL MCCLAY,
W. J. KYLE,
CARL E. GLOCK,
ARTHUR B. VAN BUSKIRK,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of Pennsylvania in these seven cases has not yet been officially reported. It was handed down November 24, 1930, and will be found on page 180 b *et seq.* of the Record. Supplemental opinion and final order denying a rehearing will be found on page 210 b of the Record.

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, c 229, Section 1, 43 Stat. 937.

2. The date of the original decree of the Supreme Court of Pennsylvania was November 24, 1930. A petition for reargument (R. 185 b) was filed in the Supreme Court of Pennsylvania on December 2, 1930; on December 8, 1930, the Supreme Court of Pennsylvania entered an order (R. 210 b) refusing reargument; and on December 16, 1930, a modifying order and supplemental opinion (R. 210 b) refusing reargument was entered.

3. One of the grounds of petitioners' petition for reargument to the Supreme Court of Pennsylvania was that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 202 b); and the final order of the Supreme Court of Pennsylvania (R. 210 b) refuses the reargument upon the ground that in the opinion of the Court the plan of assessment in

these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

4. *Sioux City Bridge Company v. Dakota County, Nebraska,* 260 U. S. 441, is believed to sustain the jurisdiction of this Court to review these cases by *certiorari. Leigh v. Green,* 193 U. S. 79, is believed to sustain the jurisdiction of this Court to consider the federal question, even though not raised until petition for reargument in the Supreme Court of Pennsylvania.

III.

Statement of the Case.

The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Although the facts in connection with each of the assessments in the seven cases are necessarily somewhat different from those involved in each of the other assessments, the plan of assessment pursuant to which the Board of Revision made the assessments in question, and against which our complaint is directed, is the same in all of the cases. (See opinion, R. 180 b).

We shall discuss the plan herein with particular reference to Cumberland Coal Company's appeal from its assessment in Cumberland Township, for the reason that in that case the unconstitutionality of the plan of assessment is perhaps more strikingly apparent, and the discrimination more flagrant, than that involved in the other companion cases.

A clear conception of these cases will be aided by examining petitioners' Exhibit B appearing opposite page 393 a of the Record. This exhibit is a map of Greene County, and shows in circles the assessments in each township, and in colors the property of petitioners. The exhibit was found by the trial court to be substantially correct (Finding 35, R. 444 a).

Greene County, Pennsylvania, lies in the southwestern corner of the State, and has as its eastern boundary the Monongahela River. The Pittsburgh or River Vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, and is, for the purposes of these cases, practically of the same character, quality and thickness (Finding 7, R. 434 a). The coal on the river front is, by reason of its proximity to transportation, more valuable than the back coal, and the value of the coal throughout the County decreases as you go west from the Monongahela River and leave the means of transportation (Findings 28, 29, 30, R. 440 a, 441 a).

There is a marked difference in development between that portion of the Pittsburgh or River Vein of coal in Greene County which lies within three miles of the Monongahela River, and that part which lies further back. In the three-mile strip along the river in the various townships, major mining operations have been and are being carried on (Finding 8, R. 434 a; Finding 14, R. 436 a).

Cumberland Township, Greene County, lies along the eastern boundary of the County and extends from the Monongahela River on the east, westwardly a distance of substantially nine miles, as appears by the map, petitioners' Exhibit B. Cumberland Coal Company is the owner of 9237 acres of the Pittsburgh or River Vein of coal in Cumberland Township shown in

yellow on the map, Exhibit B. There is one tract of 132 acres situate in the northeastern part of the Township, and another tract of 203 acres situate in the southeastern part of the Township near the river, about which no complaint is made, so that the appeal of Cumberland Coal Company in Cumberland Township may be considered as dealing only with the remaining 8902 acres. This unopened (R. 59 a) virgin coal extends from a point distant 2¼ miles westwardly from the Monongahela River and runs back to the western line of Cumberland Township, a distance of about nine miles from the river. It does not touch the river at any place, and can be transported only by the construction of new railroads at an expenditure of very large sums of money (Finding 10, R. 434 a, 435 a).

The statutes of Pennsylvania provide for the triennial assessment (see Appendix, section "B"), at its "actual value" (see Appendix, section "C"), of all real estate in each county for purposes of taxation (see Appendix, section "A"), and constitute the County Commissioners of each county a "Board of Revision" to revise, correct and equalize the valuations of all property returned by the assessors of their county, and to see that all property is "valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold" (see Appendix, section "D"). Upon the valuations so made county taxes are levied throughout each county and various local taxes are levied by the taxing authorities of each separate township.

When the three Commissioners of Greene County, sitting as a Board of Revision, came to revise and equalize the triennial assessments for 1928, they pursued with respect to the valuation of the Pittsburgh or River

vein of coal the following plan: They assessed all the Pittsburgh or River vein of coal underlying the territorial limits of each separate township at the same value per acre* (R. 38 a, 39 a, 55 a; and see map Exhibit B inserted R. 393 a, and Finding 35, R. 444 a), in complete disregard of the admitted fact that, by reason of great differences in distance from river or rail transportation and by reason of other economic factors, the actual or market value of the coal per acre varied throughout each township, and in some instances the Pittsburgh or River vein of coal in one part of a township, belonging to one owner, had an actual or market value of as much as twice that of other coal of the same vein in the same township, belonging to other owners (Finding 14, R. 436 a; Finding 30, R. 441 a).

Thus in Cumberland Township the Board of Revision valued the Pittsburgh or River vein of coal throughout the entire Township at $260.00 per acre (with the exception of 250 acres or less surrounding actual operations which were uniformly assessed at $500.00 per acre) (Finding 11, R. 435 a) **. This plan was pursued in the face of the following admitted facts found by the trial court:

Finding 14 (R. 436 a):

> "The coal along the Monongahela River on the east of Cumberland Township and for a distance west from the river of approximately three miles, because of its accessibility to market both by river and rail, and because of the fact that it was being actively operated, is worth twice as much as the

*Excepting very small acreages surrounding actual operations, which they termed "active coal," and assessed at a uniform higher rate.

**In so doing the Board purported to assess the coal upon a basis of fifty per cent. of actual value, the ratio generally fixed throughout the County (Findings 18, 20; R. 438a).

balance of the coal in said township from the three mile line to the rear of the township, and nearly all of the coal belonging to the Cumberland Coal Company in Cumberland Township is in that part of the township beginning at a line approximately parallel to the Monongahela River, two and one quarter miles west of the river, and extending west in the township to its boundary, a distance of approximately six miles." (*i. e.,* nine miles from the river)

Finding 30 (R. 441 a):

"The Pittsburgh or River vein of coal of appellant lying a distance of three miles west of the Monongahela River and extending back a distance of three * miles, or six * miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly."

It was seemingly the theory of the Board of Revision that they had fulfilled their duty under the law if their assessment of coal per acre was based on the fair *average* value of the coal throughout each township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence. Thus Mr. J. N. Scott, Chairman of the Board, testified (R. 251 a):

"Q. What, in your opinion, is the fair market value of the Pittsburgh or River vein of coal

*This coal of appellant really extends back six miles, or nine miles from the river. (See Finding 10, R. 435a; Finding 14, R. 436a; and map, Exhibit B).

in Cumberland Township per acre at public sale after due and public notice?

"A. Not less than $600.00.

"Q. That testimony of yours extends to the whole township, whether it abuts upon the river or extends eight miles back to the Cumberland Township line?

"A. That is the average of the Township."

(Record p. 256 a):

"Q. Now, Mr. Scott, I am trying to get at what purchasers would want and what would enter their mind in making purchases of coal. You have talked about the average price of $600.00. Will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

"A. The front coal might get very valuable. It certainly would not be less than $1,000.00. It would depend on circumstances. By carrying the front at $1,000.00 and the back at $500.00,

It would get an average of $750.00."

Similarly Mr. Paul Debolt, another of the Commissioners being on the stand (R. 264 a):

"Q. What, in your opinion, Mr. Debolt, is the market value of the Pittsburgh or River vein of coal in Cumberland Township at public sale after due public notice?

"A. I think at least $600.00 is the average price."

(Record p. 268 a):

"Q. At the time you were cross-examined by Mr. McClay about the price of the front coal in Cumberland Township, I did not catch what you said—how much an acre it was?

"A. I think that coal in the front should be worth at least $1,000.00 an acre.
"Q. The average of the township $600.00 an acre?
"A. Yes."

In presenting the plan of assessment, as set forth above, we have referred particularly to the situation in Cumberland Township. The same plan was followed in Wayne and Perry Townships, where all the coal was uniformly assessed at $110.00 per acre in Perry Township, and $85.00 per acre in Wayne Township, despite the fact that the Court found (Finding 15, R. 539 a) that the coal in certain portions of each of these Townships was more valuable than the coal in other portions. In Greene Township the coal was all assessed at $225.00 per acre, despite the fact that the evidence shows that the Greene Township coal is worth only about one-half as much as the adjoining coal in Monongahela Township (R. 265 a) which was assessed at only $300.00 per acre.

Petitioners' appeals from the assessments to the Court of Common Pleas of Greene County were dismissed (R. 470 a, 519 a, 573 a, 608 a, 646 a, 683 a, 719 a). On November 24, 1930, the Supreme Court of Pennsylvania affirmed the decrees of the court below (R. 184 b) upon the ground that a landowner may not challenge his individual assessment by showing undervaluations of other properties in the taxing district (R. 182 b), and that his sole basis of redress must be that his individual property was assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county (R. 183 b). The conclusion of the Supreme Court of Pennsylvania is concisely stated by it thus (R. 183 b):

"The fifty per cent. ratio throughout the county having been uniformly fixed and appellants

not having shown that their assessments as made are in excess of fifty per cent. of the fair market value of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

On December 2, 1930, your petitioners presented to the Supreme Court of Pennsylvania their petition for a reargument (R. 185 b) upon the ground, *inter alia*, that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 202 b); and on December 16, 1930, the Court entered the following order (R. 210 b):

"And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused."

"PER CURIAM."

IV.

Specifications of Error.

1. The Supreme Court of Pennsylvania erred in finding and holding that the plan of assessment involved in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Pennsylvania erred in finding and holding that Township Assessors and County Commissioners sitting as a Board of Revision may

assess all bituminous coal in the Pittsburgh or River vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from river or rail transportation, and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township, and that the coal fronting on the river and railroads possesses a value twice that of coal lying back from the river and extending to a distance of nine or ten miles.

3. The Supreme Court of Pennsylvania erred in finding and holding that a landowner may not challenge his individual assessment by showing systematic undervaluations of other properties in the taxing district.

4. The Supreme Court of Pennsylvania erred in finding and holding that the sole basis of redress of a landowner must be that his individual property is assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county.

V.

Summary of Argument.

A. The plan of assessment in these cases involves an arbitrary, intentional and systematic discrimination as between different coal owners.

B. The decision below is contrary to and in conflict with prior decisions of this Court.

VI.

Argument.

POINT A.

THE PLAN OF ASSESSMENT IN THESE CASES INVOLVES AN ARBITRARY, INTENTIONAL AND SYSTEMATIC DISCRIMINATION AS BETWEEN DIFFERENT COAL OWNERS.

In *Sunday Lake Iron Company v. Wakefield Township,* 247 U. S. 350, 352, this Court held that:—

> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v. Chicago Union Traction Co.,* 207 U. S. 20, 35, 37, 52 L. ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757."

In these cases the taxing authorities applied a systematic method to the assessment of coal lands throughout the county. The system was to assess all the coal which happened to lie within purely arbitrary township lines at the same value, irrespective of actual value. Thus the taxing authorities assessed the coal throughout Cumberland Township at $260.00 an acre, although they themselves testified that the front coal in the township was worth $1000.00 an acre and the back coal in the township only half as much, and the trial court so

found. The explanation given by the Chairman of the Board was (R. 57 a) "We assessed the coal in the whole township the same because the coal at the back end of the township sold for twice the assessed valuation". Admittedly, then the back coal (of petitioner) was assessed at 50% of true value and the front coal of others at 25% of true value.

Under the circumstances it is difficult to conceive of a more arbitrary method of assessment. Manifestly its effect was to systematically undervalue the coal of the owners in the more valuable sections of the township, and transfer a portion of their lawful tax burden to the owners of the less valuable coal.

We submit that this systematic, arbitrary and intentional discrimination brings the case within the protective scope of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as defined by this Honorable Court.

Point B.

THE DECISION BELOW IS CONTRARY TO AND IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

The decision of the Supreme Court of Pennsylvania appears from the following excerpt from its opinion:

> "Appellants' counsel state their position thus: Township assessors and county commissioners sitting as a board of revision may not assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values where it is undisputed

that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of nine or ten miles. Our answer must be that they may so assess it, and the courts may not alter individual assessments, provided they do not fix the value at a figure in each instance greater than the fair market value of each owner's property, or, as in the cases before us, higher than the percentage or value, here fifty per cent. uniformly fixed throughout the county.

* * * * * * *

"The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

We contend that while a landowner may not attack the assessment in reliance on a few isolated cases of proportionate undervaluations, on the other hand where, as here, the plan of assessment itself necessarily results in the assessment of the same class of property of different owners being made in widely differing proportions of their respective actual values, the Fourteenth Amendment affords protection.

Sioux City Bridge Company v. Dakota County, 260 U. S. 441, was heard by this Court upon writ of certiorari to the Supreme Court of Nebraska. There the portion of petitioners' bridge in Dakota County, Nebraska, was assessed for taxation at its true value, while real estate and improvements generally in the county were assessed at 55% of their selling value.

The Supreme Court of Nebraska held that the remedy of the petitioners was to have the other property which had been assessed below its true value raised rather than to have property assessed at its true value reduced. This Court reversed the judgment of the state court, saying (p. 445):

> "The supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except 'to have the property assessed, below its true value raised, rather than to have property assessed at its true value reduced.' The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of *Taylor v. Louisville & N. R. Co.*, 31 C. C. A., 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in *Greene v. Louisville & Interurban R. Co.*, 244 U. S., 499, 516-518, 61 L. ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is

to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

Similarly, in *Southern Railway Company v. Watts,* 260 U. S., 519, 526, this Court said:

"The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class, belonging to others. *Raymond v. Chicago Union Traction Co.,* 207 U. S., 20, 52 L. ed. 78, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757. This may be true although the discrimination is practised through the action of different officials. *Greene v. Louisville & I. R. Co.,* 244 U. S., 499, 61 L. ed. 1280, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co. v Wakefield*

Twp., 247 U. S., 350, 353, 62 L. ed. 1154, 1156, 38 Sup. Ct. Rep. 495; *Chicago, B. & Q. R. Co. v. Babcock,* 204 U. S., 585, 51 L. ed. 636, 27 Sup. Ct. Rep. 326; *Coulter v. Louisville & N. R. Co.,* 196 U. S., 599, 49 L. ed. 615, 25 Sup. Ct. Rep. 342; *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 43 Sup. Ct. Rep. 190."

In *Chicago Great Western Railway Company v. Kendall,* 266 U. S., 94, 98, this Court said:

"The averments of both bills make a case of unjust discrimination against complainants' property in that there is an intentional systematic undervaluation by state officials of Iowa of other taxable property of the same class, when the complainants' property is assessed and taxed at a much higher rate. In such cases, the Federal authorities render it clear that the complainants may have the remedy by injunction in equity to prevent the taxation of their property at any higher rate than that imposed upon the property of those in whose favor the discrimination exists. *Cummings v. Merchants' Nat. Bank,* 101 U. S., 153, 160, 25 L. ed. 903, 905; *Greene v. Louisville & I. R. Co.,* 244 U. S., 499, 516, 61 L. ed. 1280, 1289, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88; *Taylor v. Louisville & N. R. Co.,* 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350. See also *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 445, 67 L. ed. 340, 342, 28 A. L. R. 979, 43 Sup. Ct. Rep. 190, and *Sunday Lake Iron Co. v. Wakefield Twp.,* 247 U. S., 350, 352, 62 L. ed. 1154, 1155, 38 Sup. Ct. Rep. 495."

These cases clearly demonstrate that any system of assessment which necessarily subjects one owner to taxation upon a substantially higher proportion of the full value of his property than other owners in the tax-

ing district, is unconstitutional. That such is the situation here is strikingly clear, especially in view of the fact that township, road, and school taxes, which constitute by far the greater part of all taxes on the property, are levied upon the assessments here involved, and in such instances each separate township is the taxing district to which the equal protection clause of the Constitution applies.

The question here involved is one of very general concern to the owners of coal in Pennsylvania. The court found (Finding 24, R. 439 a) that there has been a depreciation in the value of the Pittsburgh coal in the past six years throughout Greene County, and the testimony was that the development of this coal has ceased and the industry is practically at a standstill (R. 94 a, 95 a), and that in the general field coal owners are frequently forced to let their property, or a substantial part of it, be sold for taxes (R. 99 a). The failure of numerous banking institutions and individuals in these districts is a matter of common knowledge. The Supreme Court of Pennsylvania, in its opinion, says that "the proper assessment of coal lands has been one of the most perplexing governmental questions with which the courts of this Commonwealth have had to deal". The economic welfare of thousands upon thousands of people in the bituminous coal fields of Pennsylvania and adjoining states requires that this Honorable Court shall properly restrict the taxing authorities in the pursuance of this unlawful system which has already helped to bring about most distressing consequences.

VII.

Conclusion.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the plan of assessment here involved, which threatens to deprive petitioners and great numbers of other coal owners of their constitutional rights, may be presented to this Court for consideration and decision, and that to such an end writs of *certiorari* should be granted in each of the above-entitled seven companion cases, and this Court should review the decision of the Supreme Court of Pennsylvania and finally reverse it.

Respectfully submitted,

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Of Counsel.

APPENDIX.

A. Real Estate and Personal Property Liable to Taxation for County Purposes.

Act of April 29, 1844, P. L. 486, Section 32, as amended by the *Act of April 28, 1927,* P. L. 491, Section 1. (Pennsylvania Statutes 1928 supplement, sec. 20554):

"Section 32. Be it further enacted, that from and after the passage of this act, all real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries and ferries, wharves and all other real estate not exempt by law from taxation; * * * and *all* salaries and emoluments of office, all offices, and posts of profit, professions, trades and occupations, except the occupation of farmers, together with all other things now taxable by the laws of this Commonwealth, shall be valued and assessed and subject to taxation for the purposes in this act mentioned, and for all county purposes whatsoever."

B. Triennial Assessment.

Act of April 15, 1834, P. L. 509, Sections 1 and 2 (Pennsylvania Statutes 1920, 20579, 20580):

"Section 1. Be it enacted, etc., That the Commissioners of every county, shall at their first meeting after the general election in every year, proceed to make an estimate of the probable expense of the county, for the ensuing year.

"Section 2. Within six weeks after the general election, in the year one thousand eight hundred and thirty-four, and in every third year there-

after, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, requiring them to make out and return within thirty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons, residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same to be made in the manner hereinafter directed.

Act of May 15, 1841, P. L. 393, Section 6 (Pennsylvania Statutes, 1920, sec. 20581):

"Section 6. That within four weeks after the next general election, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, who shall proceed to make out and return, within sixty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same, to be made in the manner heretofore provided for in the previous section of this act, said valuation to continue until the next triennial assessment, at which time the assessment shall be made by the assessors and assistant assessors, as prescribed by the provisions of this act."

Act of April 22, 1846, P. L. 486, Section 16 (Pennsylvania Statutes, 1920, sec. 20582):

"Section 16. That the triennial assessments required under existing laws, shall be made in the several counties, in the year one thousand eight

hundred and forty-six, and triennially thereafter, in the manner prescribed by the acts of assembly regulating the same."

C. Property to Be Assessed at Actual Value.

Act of May 15, 1841, P. L. 393, Section 4 (Pennsylvania Statutes 1920, sec. 20590):

"Section 4. The third and sixth sections of the act entitled 'An act relating to county rates and levies, and township rates and levies,' passed the fifteenth day of April, one thousand eight hundred and thirty four, and all the laws of this Commonwealth which require the assessors of the several townships, wards, and districts, to fix a uniform standard of value, of objects made taxable by law, be and the same are hereby repealed, and from and after the passage of this act, it shall be the duty of the several assessors and assistant assessors, to assess, rate, and value all objects of taxation, whether for state, county, city district, ward, township, or borough purposes, according to the actual value thereof, and at such rates and prices, for which the same would separately bonafide sell, and on the return of such assessment or valuation into the office of the county commissioners, after the same shall have been carefully examined and corrected, it shall be lawful for said commissioners, if they believe any property or thing made taxable, has been assessed and valued below its actual value, to raise the same to the actual value thereof, or if the same has been assessed and valued above its actual value, to reduce the same thereto; *Provided,* That in no case the said commissioners shall impose a different rate per centum, on different townships

in their county, but the same shall be equal throughout, and all rates shall be levied on the assessments as returned and corrected."

D. County Board of Revision; Equalization of Assessments.

Act of July 27, 1842, P. L. 441, Section 10 as mended by the *Act of April 29, 1844,* P. L. 486, Section 1 (Pennsylvania Statutes 1920, section 20615):

"Section 10. The county commissioners shall compose a board to be called 'Board of Revision,' of which the county commissioners holding the oldest certificate of election shall be the president. The members of the said board shall each take and subscribe an oath or affirmation, before the president of the court of common pleas for the county, in the following words, to wit: 'I, ..., do swear or affirm that I will faithfully, and to the best of my knowledge and judgment, revise, correct and equalize the valuation of all property taxable by law, ... in ..... county, ... and faithfully perform all the duties of a member of the board of revision for ..... county according to the laws of this commonwealth, which oath shall be deposited in the office of the recorder for the county.' "

Act of July 27, 1842, P. L. 441, section 13 (Pennsylvania Statutes, 1920, section 20620):

"Section 13. That the board of revision in each county shall, on receiving the returns of the assessors, proceed to examine and inquire whether the same have been made in conformity with the laws of this commonwealth, and whether all property to be valued for taxation for state and county purposes, has been valued at a sum or price not

less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold. They shall receive and consider the written communication of any taxable inhabitant of the county, relative to any property which such taxable inhabitant shall believe to have been reduced too low, and on the day appointed for determining whether any property has been reduced too low, or reduce the same if too high, they shall proceed to raise the price or valuation of any property which they shall believe to have been reduced too low, and if they cannot, on the day appointed, revise, raise and equalize, the valuation of all property which they shall believe to have been reduced too low, they may adjourn from day to day until the whole of such valuation shall have been revised, raised and equalized."

Act of July 27, 1842, P. L. 441, section 14 (Pennsylvania Statutes, 1920, section 20621):

"Section 14. That when the whole of the valuation of the assessor shall have been raised, revised and equalized, in conformity with the foregoing section, the same proceedings shall be had in reference to notice, appeals and corrections, which are now had by the laws of this Commonwealth, excepting only that the board of revision, instead of the county commissioners, shall hear and decide upon all appeals."

FILE COPY

APR 20 19

Supreme Court of the United States

OCTOBER TERM, 1930.

NO. [illegible] 7

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 8

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 9

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 10

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 11

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 12

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. [illegible] 13

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF FOR PETITIONERS.

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Supreme Court of the United States

OCTOBER TERM, 1930.

NO. 687.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 688.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 689.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 690.

CUMBERLAND COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 691.

HENRY A. PHILLIPS, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 692.

PIEDMONT COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 693.

GREENE COUNTY COAL COMPANY, Petitioner,

v.

BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF FOR PETITIONERS.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of Pennsylvania in these seven cases is officially reported in 302 Pa. 179. It will be found on page 602 *et seq.* of the Record. Supplemental opinion and final order denying a rehearing will be found on page 620 of the Record.

II.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, c 229, Section 1, 43 Stat. 937.

2. The date of the original decree of the Supreme Court of Pennsylvania was November 24, 1930. A petition for reargument (R. 605) was filed in the Supreme Court of Pennsylvania on December 2, 1930; on December 8, 1930, the Supreme Court of Pennsylvania entered an order (R. 620) refusing reargument; and on December 16, 1930, a modifying order and supplemental opinion (R. 620) refusing reargument was entered. Petition for writs of *certiorari* was filed in this Court on January 31, 1931. *Certiorari* was granted March 9, 1931 (R. 621 *et seq.*

3. One of the grounds of petitioners' petition for reargument to the Supreme Court of Pennsylvania was that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 615); and the final order of the Supreme Court of Pennsylvania (R. 620) refuses the reargument upon the ground that in the opinion of the Court the plan of assessment in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

4. *Sioux City Bridge Company v Dakota County, Nebraska,* 260 U. S. 441, is believed to sustain the jurisdiction of this Court to review these cases by *certiorari. Leigh v. Green,* 193 U. S. 79, is believed to sustain the jurisdiction of this Court to consider the federal question, even though not raised until petition for reargument in the Supreme Court of Pennsylvania.

III.

Statement of the Case.

The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Although the facts in connection with each of the assessments in the seven cases are necessarily somewhat different from those involved in each of the other assessments, the plan of assessment pursuant to which the Board of Revision made the assessments in question, and against which our complaint is directed, is the same in all of the cases. (See opinion, R. 602).

We shall discuss the plan herein with particular reference to Cumberland Coal Company's appeal from its assessment in Cumberland Township, for the reason that in that case the unconstitutionality of the plan of assessment is perhaps more strikingly apparent, and the discrimination more flagrant, than that involved in the other companion cases.

A clear conception of these cases will be aided by examining petitioners' Exhibit B appearing at page 265 of the Record, and a copy of which is, for convenience, attached to this brief. This exhibit is a map of Greene County, and shows in circles the assessments in each township, and in colors the property of petitioners. The exhibit was found by the trial court to be substantially correct (Finding 35, R. 297).

Greene County, Pennsylvania, lies in the southwestern corner of the State, and has as its eastern boundary the Monongahela River. The Pittsburgh or River Vein of coal is a continuous vein of bituminous coal underlying the whole of the County of Greene, and is, for the

purposes of these cases, practically of the same character, quality and thickness (Finding 7, R. 290). The coal on the river front is, by reason of its proximity to transportation, more valuable than the back coal, and the value of the coal throughout the County decreases as you go west from the Monongahela River and leave the means of transportation (Findings 28, 29, 30, R. 295, 296).

There is a marked difference in development between that portion of the Pittsburgh or River Vein of coal in Greene County which lies within three miles of the Monongahela River, and that part which lies further back. In the three-mile strip along the river in the various townships, major mining operations have been and are being carried on (Finding 8, R. 290; Finding 14, R. 292); and the resultant increased population requires the maintenance within this three mile strip, of improved schools and roads such as do not exist back of the three mile limit (R. 38, 39).

Cumberland Township, Greene County, lies along the eastern boundary of the County and extends from the Monongahela River on the east, westwardly a distance of substantially nine miles, as appears by the map, petitioners' Exhibit B. Cumberland Coal Company is the owner of 9237 acres of the Pittsburgh or River Vein of coal in Cumberland Township (R. 289) shown in yellow on the map, Exhibit B. There is one tract of 132 acres situate in the northeastern part of the Township, and another tract of 203 acres situate in the southeastern part of the Township near the river, about which no complaint is made, so that the appeal of Cumberland Coal Company in Cumberland Township may be considered as dealing only with the remaining 8902 acres. This unopened (R. 38) virgin coal extends from a point distant 2¼ miles westwardly from the Monongahela River and runs back to the western line of Cum-

berland Township, a distance of about nine miles from the river. (Finding 10, R. 291). It is shown in yellow on map, Exhibit B.

The statutes of Pennsylvania provide for the triennial assessment (see Appendix, section "B"), at its "actual value" (see Appendix, section "C"), of all real estate in each county for purposes of taxation (see Appendix, section "A"), and constitute the County Commissioners of each county a "Board of Revision" to revise, correct and equalize the valuations of all property returned by the assessors of their county, and to see that all property is "valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold" (see Appendix, section "D"). Upon the valuations so made county taxes are levied throughout each county and various local taxes are levied by the taxing authorities of each separate township.

When the three Commissioners of Greene County, sitting as a Board of Revision, came to revise and equalize the triennial assessments for 1928, they pursued with respect to the valuation of the Pittsburgh or River vein of coal the following plan: They assessed all the Pittsburgh or River vein of coal underlying the territorial limits of each separate township at the same value per acre* (R. 24, 25, 35; and see map Exhibit B, R. 265, and attached hereto, and Finding 35, R. 297), in complete disregard of the admitted fact that, by reason of great differences in distance from river or rail transportation and by reason of other economic factors, the actual or market value of the coal per acre varied throughout each township, and in some instances the

*Excepting very small acreages surrounding actual operations, which they termed "active coal," and assessed at a uniform higher rate.

Pittsburgh or River vein of coal in one part of a township, belonging to one owner, had an actual or market value of as much as twice that of other coal of the same vein in the same township, belonging to other owners (Finding 14, R. 292; Finding 30, R. 296).

Thus in Cumberland Township the Board of Revision valued the Pittsburgh or River vein of coal throughout the entire Township at $260.00 per acre (with the exception of 250 acres or less surrounding actual operations which were uniformly assessed at $500.00 per acre) (Finding 11, R. 291) **. This plan was pursued in the face of the following admitted facts found by the trial court:

Finding 14 (R. 292):

"The coal along the Monongahela River on the east of Cumberland Township and for a distance west from the river of approximately three miles, because of its accessibility to market both by river and rail, and because of the fact that it was being actively operated, is worth twice as much as the balance of the coal in said township from the three mile line to the rear of the township, and nearly all of the coal belonging to the Cumberland Coal Company in Cumberland Township is in that part of the township beginning at a line approximately parallel to the Monongahela River, two and one quarter miles west of the river, and extending west in the township to its boundary, a distance of approximately six miles." (*i. e.,* nine miles from the river)

Finding 30 (R. 296):

"The Pittsburgh or River vein of coal of appellant lying a distance of three miles west of the

**In so doing the Board purported to assess the coal upon a basis of fifty per cent. of actual value, the ratio generally fixed throughout the County (Findings 18, 20; R. 293, 294).

Monongahela River and extending back a distance of three * miles, or six * miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly."

Conclusion of Law No. 7 (R. 301):

"7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township and is not of the same value, and is not quite so accessible to market. The coal along the river and for a considerable area (much more than 250 acres) around the operating plants is worth $1000.00 per acre, and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust."

It was seemingly the theory of the Board of Revision that they had fulfilled their duty under the law if their assessment of coal per acre was based on the fair *average* value of the coal throughout each township as a whole, and the fact that the more valuable coal in the township belonged to one owner and the less valuable to another owner was of no consequence. Thus Mr. J. N. Scott, Chairman of the Board, testified (R. 171):

"Q. What, in your opinion, is the fair market value of the Pittsburgh or River vein of coal

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*This coal of appellant really extends back six miles, or nine miles from the river. (See Finding 10, R. 291; Finding 14, R. 292; and map, Exhibit B).

in Cumberland Township per acre at public sale after due and public notice?

"A. Not less than $600.00.

"Q. That testimony of yours extends to the whole township, whether it abuts upon the river or extends eight miles back to the Cumberland Township line?

"A. That is the average of the Township."

(Record p. 174):

"Q. Now, Mr. Scott, I am trying to get at what purchasers would want and what would enter their mind in making purchases of coal. You have talked about the average price of $600.00. Will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

"A. The front coal might get very valuable. It certainly would not be less than $1,000.00. It would depend on circumstances. By carrying the front at $1,000.00 and the back at $500.00, it would get an average of $750.00."

Similarly Mr. Paul Debolt, another of the Commissioners being on the stand (R. 180):

"Q. What, in your opinion, Mr. Debolt, is the market value of the Pittsburgh or River vein of coal in Cumberland Township at public sale after due public notice?

"A. I think at least $600.00 is the average price."

(Record p. 182):

"Q. At the time you were cross-examined by Mr. McClay about the price of the front coal in Cumberland Township, I did not catch what you said—how much an acre it was?

"A. I think that coal in the front should be worth at least $1,000.00 an acre.
"Q. The average of the township $600.00 an acre?
"A. Yes."

Of course the averaging of the value of the coal lands of any particular owner in a township would be a highly proper system of assessment, but to average the coal of all the different owners in the township, and assess them all at this same average value is manifestly discriminatory.

We have thus far discussed the plan of assessment involved in these cases with particular reference to the appeal of petitioner, Cumberland Coal Company, from its assessment in Cumberland Township. In view of the fact, as stated by the Supreme Court of Pennsylvania in its opinion, that "These seven appeals * * * involve, when reduced to final analysis, but one question" (R. 602), there is manifestly no need to burden this Honorable Court with a detailed exposition of the facts in each of the other six cases, and hence we need add only a few general observations with regard to the assessments in the other townships involved in the remaining cases.

In pursuance of the plan of assessment hereinbefore referred to on page 5., the Board of Revision assessed all of the Pittsburgh or River vein of coal throughout Perry Township at the uniform value of $110.00 per acre (R. 25), and throughout Wayne Township at the uniform value of $85.00 per acre (R. 25). This plan was pursued despite the fact that the Court found, and it is not disputed, that the coal in certain portions of each of these Townships was more valuable than the coal in other portions. The pertinent part of the Finding in question (Finding 15, R. 360) reads as follows:

> "While it is true that the coal in the southeastern part of Perry Township and in the southern part of Wayne Township is of more value than the coal in the northern and western parts of said townships, the assessment based on Township lines throughout the whole of these townships is less than one-half of the market value of the coal in each of these townships, whether you determine it by actual selling values at a public sale with a willing seller and a willing purchaser, or on the basis of past sales actually carried out, or upon consideration of its intrinsic value."

The coal holdings of petitioners in Perry and Wayne Townships are in the less valuable portions of these Townships (See Exhibit B attached to this brief). They are as follows: Cumberland Coal Company, in Perry Township, 3126 acres (Finding 2, R. 356); Cumberland Coal Company, in Wayne Township, 6012 acres (Finding 2, R. 391); Henry A. Phillips, in Wayne Township, 6900.7 acres (Finding 2, R. 415); Piedmont Coal Company, in Wayne Township, 3955.2 acres (Finding 2, R. 438); Greene County Coal Company, in Perry Township, 3207 acres (Finding 2, R. 462).

In further pursuance of the aforesaid plan, the Board of Revision assessed all of the Pittsburgh or River vein of coal in Greene Township at $225.00 per acre (R. 24) despite the fact that the evidence shows that the Greene Township coal is worth substantially the same as the adjoining coal in the rear of Cumberland Township, to which we have already referred (R. 180, 181, 118), and only about one-half as much as the coal in Monongahela Township (R. 77, 105, 128) which the Board of Revision assessed uniformly at $300.00 per acre (R. 296). Mr. Scott, Chairman of the Board, testified he considered the back coal in Cumberland Township worth

$500.00 an acre (R. 175) and the Greene Township coal worth $450.00 an acre (R. 176). Mr. Debolt, another member of the Board, confirmed these values, and testified (R. 181):

> "Well, Greene Township I would consider worth as much as the back end of Cumberland."

The findings of the Trial Court recognize the propriety of these views of the Board as to the value of the Greene Township Coal. The Court found that the adjoining coal in the rear of Cumberland Township, of the same character, quality and thickness (Finding 7, R. 290), and, like the Greene Township coal, situated more than three miles from the river (see Exhibit B attached hereto), was not worth one-half as much as the coal lying along the river and within the three mile limit (Findings 14 and 30, quoted p. 6 of this brief). Again, the Court found (Finding 32 in Cumberland Township Appeal, R. 296) that the coal in Monongahela Township, which was assessed at $300.00 per acre, "is worth $500.00 more per acre than the coal in the rear end of Cumberland Township belonging to the appellant Company."

Petitioner, Cumberland Coal Company, is the owner of 11,956.6 acres of coal in Greene Township, which coal, it contends, by reason of the above facts, was assessed at a substantially higher percentage of its actual value than the coal of other owners in Monongahela Township and the front portion of Cumberland Township.

In pursuance of their rights under the Pennsylvania statutes (see Appendix Section "E"), petitioners appealed from the assessments of their coal in the respective townships, as determined by the Board of Revision, to the Court of Common Pleas of Greene County

alleging as the basis for their appeals that (R. 287, 322, 354, 389, 413, 436, 460):

> "(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.
>
> "(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed 'active coal') at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene."

Upon hearing, the Court of Common Pleas of Greene County dismissed all of the appeals. From these decisions petitioners appealed (under Act quoted in Appendix "F") to the Supreme Court of Pennsylvania, attacking the assessments primarily upon the ground that the plan of assessment followed by the Board of Revision is unfair, unjust, discriminatory, and in contravention of Section 1 of Article IX of the Constitution of Pennsylvania, which provides:

> "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the au-

thority levying the tax, and shall be levied and collected under general laws."

On November 24, 1930, the Supreme Court of Pennsylvania affirmed the decrees of the court below (R. 605) upon the ground that a landowner may not challenge his individual assessment by showing undervaluations of other properties in the taxing district (R. 603), and that his sole basis of redress must be that his individual property was assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county (R. 603). The conclusion of the Supreme Court of Pennsylvania is concisely stated by it thus (R. 604):

> "The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market value of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

On December 2, 1930, petitioners presented to the Supreme Court of Pennsylvania their petition for a reargument (R. 605) upon the ground, *inter alia,* that the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States (R. 615); and on December 16, 1930, the Court entered the following order (R. 620):

> "And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused."
>
> "PER CURIAM."

IV.

Specification of Errors to be Urged.

1. The Supreme Court of Pennsylvania erred in finding and holding that the plan of assessment involved in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Pennsylvania erred in finding and holding that Township Assessors and County Commissioners sitting as a Board of Revision may assess all bituminous coal in the Pittsburgh or River vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from river or rail transportation, and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township, and that the coal fronting on the river and railroads possesses a value twice that of coal lying back from the river and extending to a distance of nine or ten miles.

3. The Supreme Court of Pennsylvania erred in finding and holding that a landowner may not challenge his individual assessment by showing systematic undervaluations of other properties in the taxing district.

4. The Supreme Court of Pennsylvania erred in finding and holding that the sole basis of redress of a landowner must be that his individual property is assessed at a figure greater than its fair market value, or the percentage of such value generally fixed throughout the county.

V.

Summary of Argument.

A. The plan of assessment in these cases involves an arbitrary, intentional and systematic discrimination as between different coal owners.

B. The assessments in these cases, and the decision of the Supreme Court of Pennsylvania sustaining them, contravene the rights of petitioners under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, as interpreted by this Court.

VI.

Argument.

Point A.

THE PLAN OF ASSESSMENT IN THESE CASES INVOLVES AN ARBITRARY, INTENTIONAL AND SYSTEMATIC DISCRIMINATION AS BETWEEN DIFFERENT COAL OWNERS.

In Sunday Lake Iron Company v. Wakefield Township, 247 U. S. 350, 352, this Court held that:—

> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value

of his property. *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35, 37, 52 L. ed. 7_, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757."

This statement is quoted with approval in *Sioux City Bridge Company v. Dakota County, Neb.*, 260 U. S. 441, 445. Analogous cases are *Greene v. Louisville and Interurban R. Co.*, 244 U. S. 499, 516-518; *Cummings v. Merchants Nat. Bank*, 101 U. S. 153, 160; *Taylor v. Louisville & N. R. Co.*, 88 Fed. 350, 364, 365, 372, 374; *Louisville & N. R. Co. v. Bosworth*, 209 Fed. 380, 452; *Washington Water Power Co. v. Kootenai County*, 270 Fed. 269, 374.

In the present cases the taxing authorities applied a systematic method to the assessment of coal lands throughout the county. The system was to assess all the coal which happened to lie within purely arbitrary township lines at the same value, irrespective of actual value. Thus the taxing authorities assessed the coal throughout Cumberland Township at $260.00 an acre, although they themselves testified that the front coal in the township was worth $1000.00 an acre and the back coal in the township only half as much, and the trial court so found. The explanation given by the Chairman of the Board was (R. 37) "We assessed the coal in the whole township the same because the coal at the back end of the township sold for twice the assessed valuation". Admittedly, then the back coal (of petitioner) was assessed at 50% of true value and the front coal of others at 25% of true value. This discrimination is expressly recognized by the Trial Court, and yet it was viewed as disclosing no lack of uniformity; to anyone conversant with the principles of equal protection the following conclusions of law of the Trial Court are nothing short of startling:

Conclusions 7 and 8 (R. 301):

"7. Appellant's Pittsburgh or River vein of coal in Cumberland Township is not assessed at the same rate as all the other coal in this township and is not of the same value, and is not quite so accessible to market. The coal along the river and for a considerable area (much more than 250 acres) around the operating plants is worth $1000.00 per acre, and the coal throughout the remainder of Cumberland Township is worth from $500.00 to $525.00 per acre, and on this basis the assessment, as revised by the Board of Revision, does not disclose such a lack of uniformity as would invalidate the assessment or render it inequitable or unjust.

"8. The Commissioners have not imposed upon appellant in this case, as owners of coal in Cumberland Township, unjust burdens which require it to bear an unequal proportion of the taxes in favor of others, owners of Pittsburgh or River Vein of coal lying along the Monongahela River in Cumberland and Monongahela Townships."

Under the circumstances it is difficult to conceive of a more arbitrary method of assessment. Manifestly its effect was to systematically undervalue the coal of the owners in the more valuable sections of the township, and transfer a portion of their lawful tax burden to the owners of the less valuable coal.

We submit that this systematic, arbitrary and intentional discrimination brings the case within the protective scope of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, as defined by this Honorable Court.

POINT B.

THE ASSESSMENTS IN THESE CASES, AND THE DECISION OF THE SUPREME COURT OF PENNSYLVANIA SUSTAINING THEM, CONTRAVENE THE RIGHTS OF PETITIONERS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, AS INTERPRETED BY THIS COURT.

The decision of the Supreme Court of Pennsylvania appears from the following excerpts from its opinion:

> "Appellants' counsel state their position thus: Township assessors and county commissioners sitting as a board of revision may not assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values where it is undisputed that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of nine or ten miles. Our answer must be that they may so assess it, and the courts may not alter individual assessments, provided they do not fix the value at a figure in each instance greater than the fair market value of each owner's property, or, as in the cases before us, higher than the percentage or value, here fifty per cent. uniformly fixed throughout the county.
>
> * * * * * * *
>
> "The fifty per cent, ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are

in excess of fifty per cent. of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be."

We contend that while a landowner may not attack the assessment in reliance on a few isolated cases of proportionate undervaluations, on the other hand where, as here, the plan of assessment itself necessarily results in the assessment of the same class of property of different owners being made in widely differing proportions of their respective actual values, the Fourteenth Amendment affords protection.

Sioux City Bridge Company v. Dakota County, 260 U. S. 441, was heard by this Court upon writ of certiorari to the Supreme Court of Nebraska. There the portion of petitioners' bridge in Dakota County, Nebraska, was assessed for taxation at its true value, while real estate and improvements generally in the county were assessed at 55% of their selling value. The Supreme Court of Nebraska held that the remedy of the petitioners was to have the other property which had been assessed below its true value raised rather than to have property assessed at its true value reduced. This Court reversed the judgment of the state court, saying (p. 445):

"The supreme court does not make it clear whether it thinks the discrimination charged was proved or not, but, assuming the discrimination, it holds that the Bridge Company has no remedy except 'to have the property assessed, below its true value raised, rather than to have property assessed at its true value reduced.' The dilemma presented by a case where one or a few of a class of taxpayers are assessed at 100 per cent of the value of their

property, in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage, in violation of the law, has been often dealt with by courts, and there has been a conflict of view as to what should be done. There is no doubt, however, of the view taken of such cases by the Federal courts in the enforcement of the uniformity clauses of state statutes and constitutions, and of the equal protection clause of the 14th Amendment. The exact question was considered at length by the circuit court of appeals of the sixth circuit in the case of *Taylor v. Louisville & N. R. Co.*, 31 C. C. A., 537, 60 U. S. App. 166, 88 Fed. 350, 364, 365, and the language of that court was approved and incorporated in the decision of this court in *Greene v. Louisville & Interurban Railroad Co.*, 244 U. S., 499, 516-518, 61 L. ed. 1280, 1289, 1290, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of underassessed property in the taxing district. This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.

In substance and effect, the decision of the Nebraska Supreme Court in this case upholds the violation of the 14th Amendment to the injury of the Bridge Company. We must, therefore, reverse its judgment."

Similarly, in *Southern Railway Company v. Watts,* 260 U. S., 519, 526, this Court said:

"The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class, belonging to others. *Raymond v. Chicago Union Traction Co.,* 207 U. S., 20, 52 L. ed. 78, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757. This may be true although the discrimination is practised through the action of different officials. *Greene v. Louisville & Interurban Railroad Co.,* 244 U. S., 499, 61 L. ed. 1280, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co. v. Wakefield Twp.,* 247 U. S., 350, 353, 62 L. ed. 1154, 1156, 38 Sup. Ct. Rep. 495; *Chicago, B. & Q. R. Co. v. Babcock,* 204 U. S., 585, 51 L. ed. 636, 27 Sup. Ct. Rep. 326; *Coulter v. Louisville & N. R. Co.,* 196 U. S., 599, 49 L. ed. 615, 25 Sup. Ct. Rep. 342; *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 43 Sup. Ct. Rep. 190."

In *Chicago Great Western Railway Company v. Kendall,* 266 U. S., 94, 98, this Court said:

"The averments of both bills make a case of unjust discrimination against complainants' property in that there is an intentional systematic undervaluation by state officials of Iowa of other tax-

able property of the same class, when the complainants' property is assessed and taxed at a much higher rate. In such cases, the Federal authorities render it clear that the complainants may have the remedy by injunction in equity to prevent the taxation of their property at any higher rate than that imposed upon the property of those in whose favor the discrimination exists. *Cummings v. Merchants' Nat. Bank,* 101 U. S., 153, 160, 25 L. ed. 903, 905; *Greene v. Louisville & Interurban Railroad Co.,* 244 U. S., 499, 516, 61 L. ed. 1280, 1289, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917 E. 88; *Taylor v. Louisville & N. R. Co.,* 31 C. C. A. 537, 60 U. S. App. 166, 88 Fed. 350. See also *Sioux City Bridge Co. v. Dakota County,* 260 U. S., 441, 445, 67 L. ed. 340, 342, 28 A. L. R. 979, 43 Sup. Ct. Rep. 190, and *Sunday Lake Iron Co. v. Wakefield Twp.,* 247 U. S., 350, 352, 62 L. ed. 1154, 1155, 38 Sup. Ct. Rep. 495."

These cases clearly demonstrate that any system of assessment which necessarily subjects one owner to taxation upon a substantially higher proportion of the full value of his property than other owners in the taxing district, is unconstitutional. That such is the situation here is strikingly clear, especially in view of the fact that township and school taxes, which constitute by far the greater part of all taxes on the property, are levied upon the assessments here involved, and in such instances each separate township is the taxing district to which the equal protection clause of the Constitution applies. (See appendix, Sections "G" and "H").

We contend that in this case the denial of equal protection to petitioners is occasioned not only by the intentional and arbitrary acts of the constituted agents of the State, but also by the action of the State judiciary

in dismissing petitioners' appeals and affirming the acts of the Board of Revision. As stated in *Brinkerhoff-Faris Trust & Savings Company v. Hill,* 281 U. S. 673, 680: "The federal guaranty of due process extends to state action through its judicial, as well as through its legislative, executive, or administrative, branch of government."

These cases are of very general concern to the owners of coal in Pennsylvania. The trial court found (Finding 24, R. 294) that there has been a depreciation in the value of the Pittsburgh coal in the past six years throughout Greene County, and the testimony was that the development of this coal has ceased and the industry is practically at a standstill (R. 62), and that in the general field coal owners are frequently forced to let their property, or a substantial part of it, be sold for taxes (R. 66). The failure of numerous banking institutions and individuals in these districts is a matter of common knowledge. The Supreme Court of Pennsylvania, in its opinion in these cases, says that "the proper assessment of coal lands has been one of the most perplexing governmental questions with which the courts of this Commonwealth have had to deal". The economic welfare of thousands upon thousands of people in the bituminous coal fields of Pennsylvania and adjoining states requires that this Honorable Court shall properly restrict the taxing authorities in the pursuance of this unlawful system which has already helped to bring about most distressing consequences.

VII.

Conclusion.

It is, therefore, respectfully submitted that the plan of assessment in these cases involves an arbitrary, intentional and systematic discrimination as between different coal owners in Greene County, and the assessments in these cases made pursuant to said plan, and the decision of the Supreme Court of Pennsylvania sustaining them, constitute an invasion of the substantive rights of the petitioners to equality of treatment under the Fourteenth Amendment to the Federal Constitution.

Wherefore the decision of the Supreme Court of Pennsylvania in these cases should be reversed, and remanded for further proceedings not inconsistent with the opinion of this Honorable Court.

Respectfully submitted,

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APPENDIX.

A. Real Estate and Personal Property Liable to Taxation for County Purposes.

Act of April 29, 1844, P. L. 486, Section 32, as amended by the *Act of April 28, 1927,* P. L. 491, Section 1. (Pennsylvania Statutes 1928 supplement, sec. 20554):

"Section 32. Be it further enacted, that from and after the passage of this act, all real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries and ferries, wharves and all other real estate not exempt by law from taxation; * * * and *all* salaries and emoluments of office, all offices, and posts of profit, professions, trades and occupations, except the occupation of farmers, together with all other things now taxable by the laws of this Commonwealth, shall be valued and assessed and subject to taxation for the purposes in this act mentioned, and for all county purposes whatsoever."

B. Triennial Assessment.

Act of April 15, 1834, P. L. 509, Sections 1 and 2 (Pennsylvania Statutes 1920, 20579, 20580):

"Section 1. Be it enacted, etc., That the Commissioners of every county, shall at their first meeting after the general election in every year, proceed to make an estimate of the probable expenses of the county, for the ensuing years.

"Section 2. Within six weeks after the general election, in the year one thousand eight hundred and thirty-four, and in every third year there-

after, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, requiring them to make out and return within thirty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons, residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same to be made in the manner hereinafter directed.

Act of May 15, 1841, P. L. 393, Section 6 (Pennsylvania Statutes, 1920, sec. 20581):

"Section 6. That within four weeks after the next general election, the commissioners of every county shall issue their precept to the assessors of the respective townships, wards and districts, who shall proceed to make out and return, within sixty days thereafter, a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons residing within their wards, townships and districts, respectively, and of all property taxable by law, together with a just valuation of the same, to be made in the manner heretofore provided for in the previous section of this act, said valuation to continue until the next triennial assessment, at which time the assessment shall be made by the assessors and assistant assessors, as prescribed by the provisions of this act."

Act of April 22, 1846, P. L. 486, Section 16 (Pennsylvania Statutes, 1920, sec. 20582):

"Section 16. That the triennial assessments required under existing laws, shall be made in the several counties, in the year one thousand eight

hundred and forty-six, and triennially thereafter, in the manner prescribed by the acts of assembly regulating the same."

C. Property to be Assessed at Actual Value.

Act of May 15, 1841, P. L. 393, Section 4 (Pennsylvania Statutes 1920, sec. 20590):

"Section 4. The third and sixth sections of the act entitled 'An act relating to county rates and levies, and township rates and levies,' passed the fifteenth day of April, one thousand eight hundred and thirty four, and all the laws of this Commonwealth which require the assessors of the several townships, wards, and districts, to fix a uniform standard of value, of objects made taxable by law, be and the same are hereby repealed, and from and after the passage of this act, it shall be the duty of the several assessors and assistant assessors, to assess, rate, and value all objects of taxation, whether for state, county, city district, ward, township, or borough purposes, according to the actual value thereof, and at such rates and prices, for which the same would separately bona fide sell, and on the return of such assessment or valuation into the office of the county commissioners, after the same shall have been carefully examined and corrected, it shall be lawful for said commissioners, if they believe any property or thing made taxable, has been assesed and valued below its actual value, to raise the same to the actual value thereof, or if the same has been assessed and valued above its actual value, to reduce the same thereto; *Provided,* That in no case the said commissioners shall impose a different rate per centum, on different townships in their

county, but the same shall be equal throughout, and all rates shall be levied on the assessments as returned and corrected."

D. County Board of Revision; Equalization of Assessments.

Act of July 27, 1842, P. L. 441, Section 10 as amended by the *Act of April 29, 1844,* P. L. 486, Section 41 (Pennsylvania Statutes 1920, section 20615):

"Section 10. The county commissioners shall compose a board to be called 'Board of Revision,' of which the county commissioners holding the oldest certificate of election shall be the president. The members of the said board shall each take and subscribe an oath or affirmation, before the president of the court of common pleas for the county, in the following words, to wit: 'I, ..., do swear or affirm that I will faithfully, and to the best of my knowledge and judgment, revise, correct and equalize the valuation of all property taxable by law ..... in ..... county, ... and faithfully perform all the duties of a member of the board of revision for ..... county according to the laws of this commonwealth, which oath shall be deposited in the office of the recorder for the county.' "

Act of July 27, 1842, P. L. 441, section 13 (Pennsylvania Statutes, 1920, section 20620):

"Section 13. That the board of revision in each county shall, on receiving the returns of the assessors, proceed to examine and inquire whether the same have been made in conformity with the laws of this commonwealth, and whether all property to be valued for taxation for state and county pur-

poses, has been valued at a sum or price not less than the same would bring after full public notice, at a public sale, supposing each separate lot or piece or tract of land, with the improvements or the personal property of each individual, company or corporation only were to be sold. They shall receive and consider the written communication of any taxable inhabitant of the county, relative to any property which such taxable inhabitant shall believe to have been reduced too low, and on the day appointed for determining whether any property has been reduced too low, or reduce the same if too high, they shall proceed to raise the price or valuation of any property which they shall believe to have been reduced too low, and if they cannot, on the day appointed, revise, raise and equalize, the valuation of all property which they shall believe to have been reduced too low, they may adjourn from day to day until the whole of such valuation shall have been revised, raised and equalized."

Act of July 27, 1842, P. L. 441, section 14 (Pennsylvania Statutes, 1920, section 20621):

"Section 14. That when the whole of the valuation of the assessor shall have been raised, revised and equalized, in conformity with the foregoing section, the same proceedings shall be had in reference to notice, appeals and corrections, which are now had by the laws of this Commonwealth, excepting only that the board of revision, instead of the county commissioners, shall hear and decide upon all appeals."

E. Appeal to Courts of Common Pleas.

Act of April 19, 1889, P. L. 37, Section 1, (Pennsylvania Statutes 1920, section 20632):

"Section 1. Any owner of real estate or taxable property in this commonwealth who may feel aggrieved by the last or any future assessment or valuation of his real estate or taxable property, may appeal from the decision of the county commissioners, or board of revision and appeal, to the court of common pleas of the county within which such property is situated, and for that purpose may present to said court or file in the prothonotary's office within sixty days after the county commissioners or board of revision and appeal have held the appeals provided for by law, and acted on the said assessments and valuations, a petition signed by him, his agent or attorney, setting forth the facts of the case, and thereupon the said court shall proceed at the earliest convenient time to be by them appointed, of which notice shall be given to the county commissioners of the proper county or to the board of revision and appeal of the proper city, to hear the said appeal and the proofs in the case, and to make such orders and decrees touching the matter complained of as to the judges of said court may seem just and equitable, having due regard to the valuation and assessment made of other real estate, in such county or city; the costs of the appeal and hearing to be apportioned or paid as the court may direct: Provided, however, That the said appeal shall not prevent the collection of the taxes complained of, but in case the same shall be reduced then the excess shall be returned to person or persons who shall have paid the same.

F. Appeal to Appellate Courts.

Act of June 26, 1901, P. L. 601, Section 1, (Pennsylvania Statutes 1920, section 20634):

"Section 1. Any owner of real estate or taxable property in this commonwealth may appeal from the judgment, order or decree of any court of common pleas, in any matter affecting the assessment of taxes upon his property, to the supreme or superior court, in the same manner as appeals are taken in other cases to the said supreme or superior court: Provided, however, That the said appeal shall not prevent the collection of the taxes complained of; but in case the same shall be reduced, then the excess shall be returned to the person or persons who shall have paid the same."

G. The Levy of Township Taxes as Applicable to Greene County.

Act of May 4, 1927, amending Section 421 of the Act of July 14, 1917, P. L. 840 (Pennsylvania Statutes, 1928 Supplement, Sections 6970, 6971):

"SECTION 421. The board of township supervisors may levy taxes upon all property and upon all occupations within the township made taxable for township purposes, as ascertained by the last adjusted valuation for county purposes, for the purposes and at the rates hereinafter specified, to wit:

One. An annual road tax, not later than the fourth Monday of March of each year, not exceeding ten mills, unless the board of supervisors by unanimous action shall, upon due cause shown, petition the court of quarter sessions, in which case the court may order a greater rate than ten mills, but not exceeding ten additional mills, to be levied. Such annual road tax shall include all levies for

road purposes and for the payment of bonds and certificates of indebtedness issued and all other debts incurred for road purposes. Not less than ten per centum of the annual road tax shall be set aside by the respective townships and used for the payment of existing indebtedness incurred for road purposes, for the payment of which indebtedness no provision has been made. All road taxes shall be collected in cash.

Two. A tax for the purpose of building and maintaining a lockup, after obtaining the assent of the electors of the township in the manner provided in section twelve hundred and fifty of this act.

Three. Upon the receipt of a petition of a majority of the owners of real estate of the township requesting it, an annual tax, not exceeding five mills, for the purpose of lighting the streets and highways in the manner provided in section three hundred and eighty-six, clause one of this act, and of defraying the cost, charges and expenses thereof.

Four. An annual tax so long as necessary, not exceeding fifty per centum of the rate of assessment for road purposes, for the purpose of procuring a lot and erecting a building thereon for a townhouse, and for the payment of indebtedness incurred in connection therewith: Provided, The total indebtedness for the payment of which any such tax shall be levied shall not exceed one-half of one per centum of the assessed value of real estate in the township.

Five. A tax for the purpose of purchasing and maintaining fire apparatus and to provide a suitable place for the housing of the same; but no appropriation to any one or more fire companies from such taxes shall, for the first appropriation, exceed five thousand dollars for the purchase of equipment, nor shall any appropriation in any year for the

purpose of maintenance of any one or more fire companies exceed one thousand dollars.

The taxes authorized to be levied by this section shall be levied upon the last adjusted valuation for county purposes, which valuation shall be furnished to the township supervisors by the county commissioners. If any further adjustment of valuation is made by the county commissioners, after any tax is so levied and before said tax is payable, such adjusted valuation shall be certified to the township supervisors and to the township collector of taxes by the commissioners, and the tax shall be collected on the basis of such adjusted valuation.

This article does not include the levy of any taxes upon particular districts, or parts of any township, for particular purposes."

H. The Levy of School Taxes as Applicable to Greene County.

Act of April 26, 1923, P. L. 102, Section 1, amending Sections 540 and 541 of the Act of May 18, 1911, P. L. 309 (Pennsylvania Statutes, 1928 Supplement, Sections 4799, 4800):

"SECTION 540. In all school districts of the third class, excepting school districts of that class which are located wholly within the boundary lines of cities of the third class and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, as aforesaid, and in all school districts of the fourth class in this Commonwealth, the school taxes shall be levied and assessed upon all the property upon which the county taxes are levied and assessed.

* * * * * * *

"SECTION 541. In order to enable the board of school directors in each district of the third class, other than school districts of that class which are located wholly within the boundary lines of cities of the third class, and where such third class school districts comprise the same territory as such city of the third class in which the same in so located, as aforesaid, and in each district of the fourth class in this Commonwealth, to assess and levy the necessary school taxes required by such district each year, the county commissioners in each county shall, on or before the first day of April in each year, at the expense of the county, furnish to each school district of the third class, other than school districts of that class which are located wholly within the boundary lines of cities of the third class, and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, as aforesaid, and to each district of the fourth class, therein, for its use, to be retained by it, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and residents or inhabitants made taxable for county purposes in such school district, stating the name of each taxable, and the valuation, description, and kind of property, and a list of the residents or inhabitants assessed; all of which real estate, personal property, and residents or inhabitants are hereby made taxable for school purposes in each school district of the third and fourth class. * * *"

Nos. 7 13

FILED
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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1930.

NO. 687.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 688.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 689.

CUMBERLAND COAL COMPANY, Petitioner,
v.
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NO. 690.

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NO. 691.

HENRY A. PHILLIPS, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 692.

PIEDMONT COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 693.

GREENE COUNTY COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF OF PETITIONERS IN OPPOSITION TO MOTION OF RESPONDENTS TO DISMISS AND QUASH THE WRITS OF CERTIORARI AND TO AFFIRM THE JUDGMENT OF THE COURT OF COMMON PLEAS OF GREENE COUNTY AND THE SUPREME COURT OF PENNSYLVANIA.

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I.

STATEMENT OF THE CASE IN SO FAR AS CONCERNS RESPONDENTS' MOTION TO DISMISS AND AFFIRM.

The respondents have moved to dismiss the writs of *certiorari* granted by the Supreme Court of the United

States in these seven cases on March 9, 1931, and assigned in support of their motion various reasons, all of which are embodied in the following points argued by them in their Brief supporting the motion:

POINT I. The petitioners failed specially to set up or claim in the Pennsylvania courts any title, right, privilege or immunity under the Constitution of the United States or under any Federal Statute within the requirements of Section 237 of the Judicial Code, and this Court is without jurisdiction to entertain the present petition.

POINT II. The Supreme Court of Pennsylvania did not consider or adjudicate the Federal question on the petition for reargument as required by this Court.

POINT III. Error not assigned is not open to review in the Supreme Court of Pennsylvania.

The facts with relation to the setting up by petitioners of their claim of impairment of rights secured by the equal protection clause of the Fourteenth Amendment to the Federal Constitution, and the adjudication by the Supreme Court of Pennsylvania with respect to such rights, are as follows:

In their petition for reargument to the Supreme Court of Pennsylvania (R. 605), the petitioners assigned as grounds for a rehearing, *inter alia,* that—

"III. THE PLAN OF ASSESSMENT IN THESE CASES VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES." (R. 615).

Under this heading in their petition for reargument petitioners cited to the Supreme Court of Pennsylvania the cases of *Sioux City Bridge Co. v. Dakota County,*

Nebraska, 260 U. S. 441; *Greene v. Louisville & I. R. Co.,* 244 U. S. 499, and other Federal cases, and petitioners quoted at length from the opinion of Chief Justice Taft in the *Sioux City Bridge Company case* (R. 615-619).

On December 8, 1930, the Supreme Court of Pennsylvania entered an order, "Reargument refused" (R. 620), and on December 16, 1930, the Supreme Court of Pennsylvania entered the following order modifying the order refusing reargument (R. 620):

> "And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused.
>
> PER CURIAM."

II.

ARGUMENT.

POINT 1.

The Alleged Impairment of Petitioners' Right to Equal Protection Under the Fourteenth Amendment to the Constitution of the United States Was Specially Set Up and Claimed in the Supreme Court of Pennsylvania.

The record in these cases clearly demonstrates that the question involved both in the Court of Common Pleas of Greene County and in the Supreme Court of Pennsylvania was whether or not the assessments involved were discriminatory or lacking in uniformity. Assuming that up to the time of presenting their petition for reargument in the Supreme Court of Pennsylvania the petitioners founded their claim of discrimination solely upon

the uniformity requirements of the Constitution of Pennsylvania, nevertheless, the record shows that their petition for reargument specifically set up and fully presented their claim to protection under the Constitution of the United States. The third ground for reargument was entitled:

> "The plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

Under this heading in their petition for reargument, the petitioners cited to the Supreme Court of Pennsylvania the cases of *Sioux City Bridge Company v. Dakota County, Nebraska,* 260 U. S. 441; *Greene v. Louisville & I. R. Co.,* 244 U. S. 499, and other decisions of this Court, and quoted at length from the opinion of Chief Justice Taft in the *Sioux City Bridge Company case* (R. 615-619). It is this last mentioned decision upon which petitioners primarily relied in their application to this Court for writs of *certiorari,* and which seemingly, in the opinion of this Court, justified the granting of the writs.

Surely, under these circumstances, there can be no force in the argument that the Federal "right" upon which petitioners relied was not "specially set up" within the meaning of Section 237 (b) of the Judicial Code, as amended.

POINT 2.

The Action of the Supreme Court of Pennsylvania in Passing Upon the Federal Question Presented in the Petition for Reargument Furnishes a Proper Jurisdictional Basis for Review by This Court.

Respondents do not deny that petitioners, in their petition for reargument to the Supreme Court of Pennsylvania, expressly asserted their claim of impairment of right secured by the Federal Constitution. They do contend, however, that the claim of Federal protection having been first asserted by the petition for reargument and after the Supreme Court of Pennsylvania pronounced its final decision, came too late to sustain a review by this Court of the Federal question.

There might be substantial force in respondents' argument if the Supreme Court of Pennsylvania had refused to consider the Federal question. On the contrary, however, the Supreme Court of Pennsylvania by its modifying order of December 16, 1930 (R. 620) decreed: *"Upon consideration* of the petition for reargument, *the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused."* (Italics ours).

The question in these cases, therefore, is whether the Supreme Court of the United States has jurisdiction to review the action of a state court of last resort where the state court takes cognizance of the Federal question presented in the petition for reargument, and not only expresses its opinion with regard to it, but makes that opinion the basic reason for refusing a reargument. That the Supreme Court of the United States has juris-

diction to review the action of the state court under such circumstances is well settled.

In *Leigh v. Green,* 193 U. S. 79, 85, this Court, speaking through Mr. Justice Day, said:

> "A motion is made to dismiss because the claim of impairment of a right secured by the 14th Amendment was not made in the courts of Nebraska until the motion for rehearing was filed in the supreme court. We are unable to discover a specific claim of this character made prior to the motion for rehearing. In the motion reference is made to the failure of the Nebraska supreme court to decide the claim theretofore made, that the statute of Nebraska was unconstitutional because of the alleged violation of the right to due process of law guaranteed by the 14th Amendment to the Constitution of the United States. Be this as it may, the supreme court of Nebraska entertained the motion and decided the Federal question raised against the contention of the plaintiff in error. In such case the question is reviewable here, although first presented in the motion for rehearing. *Mallett v. North Carolina,* 181 U. S. 589, 45 L. ed. 1015, 21 Sup. Ct. Rep. 730."

Similarly, in *McKay v. Kalyton,* 204 U. S. 458, 463 this Court said:

> "It is contended that we are without jurisdiction because no title, right, or immunity was specially set up or claimed under any Federal statute and denied. But, leaving aside for a moment all other considerations, it is plain that the defendant below set up a claim of immunity from suit in the state court under the laws of the United States, and that the right to the immunity so asserted under

an act or acts of Congress was expressly considered and denied by the state court. True it is that the immunity which was asserted was first claimed in a petition for rehearing; but, as the question was raised, was necessarily involved, and was considered and decided adversely by the state court, there is jurisdiction. *Leigh v. Green,* 193 U. S. 79., 48 L. ed. 623, 24 Sup. Ct. Rep. 390."

To the same effect are *Mallett v. North Carolina,* 181 U. S. 589, 592; *Sullivan v. Texas,* 207 U. S. 416, 422; *Grannis v. Ordean,* 234 U. S. 385, 392.

All of the cases relied upon by respondents in support of their motion are clearly distinguishable from the instant cases. *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.,* 228 U. S. 326; *McCorquodale v. Texas,* 211 U. S. 432; and *Forbes v. State Council,* 216 U. S. 396, were all instances where the state court denied the rehearing without passing upon, or expressing any opinion with regard to the Federal question. In each of them, however, this Court took occasion to point out that had the state court actually passed upon the Federal question presented in the petition for rehearing, the jurisdictional requirements would have been complied with. Thus in *Forbes v. State Council of Virginia,* 216 U. S. 396, 399, the opinion of the court (quoted on page 18 of respondents' brief) states:

"It has been many times held in this court that an attempt to introduce a Federal question into the record for the first time by a petition for rehearing is too late. *Loeber v. Schroeder,* 149 U. S. 580, 585; *Pim v. St. Louis,* 165 U. S. 273.

"There is an exception to this rule when it appears that the court below entertained the motion for rehearing, and passed upon the Federal ques-

tion. But it must appear that such Federal question was in fact passed upon in considering the motion for rehearing; if not, the general rule applies. *Mallett v. North Carolina,* 181 U. S. 589; *Leigh v. Green,* 193 U. S. 79; *Corkran Oil & Development Co. v. Arnaudet,* 199 U. S. 182; *McMillen v. Ferrum Min. Co.,* 197 U. S. 343; *Waters-Pierce Oil Co. v. Texas,* 212 U. S. 112, 118." (Italics ours).

And in *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.,* 228 U. S. 326, the opinion of Mr. Justice Lurton (quoted on page 15 of respondents' brief) states:

> "Nothing is better settled than that it is too late to raise a Federal question for the first time in a petition for a rehearing, after the final judgment of the state court of last resort. *If, however, the state court actually entertains the petition and decides the Federal question, and this appears by the record, the requirement of sec. 709, that the right shall be specially set up and denied, is complied with. McCorquodale v. Texas,* 211 U. S. 432, 53 L. ed. 269, 29 Sup. Ct. Rep. 146; *Mallett v. North Carolina,* 181 U. S. 589, 45 L. ed. 1015, 21 Sup. Ct. Rep. 730, 15 Am. Crim. Rep. 241; *McMillen v. Ferrum Min. Co.,* 197 U. S. 343, 347, 49 L. ed. 784, 787, 25 Sup. Ct. Rep. 533." (Italics ours).

Respondents argue that the modifying order of the Supreme Court of Pennsylvania dated December 16, 1930, denying reargument "expresses no more than would be implied from a simple denial of the motion." Such a contention is nothing short of frivolous. The Supreme Court of Pennsylvania in its order denying reargument stated that "upon consideration" of the petition for reargument, "the court being of opinion that the plan of assessment in these cases does not vio-

late the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, reargument is refused." It would be difficult to imagine how the Pennsylvania court could more clearly have indicated its consideration of the Federal question, nor how it could have "passed upon" the Federal question more definitely than by expressing its "opinion" with regard to it, and basing its denial of reargument upon its opinion with respect to the Federal question. Had the Supreme Court of Pennsylvania intended that its order refusing reargument should be considered as a "simple denial" it would certainly have permitted the original order of December 8th, which merely denied reargument without stating any reasons, to stand.

POINT 3.

In Reality the Federal Question Was Involved in These Cases Both in the Court of Common Pleas of Greene County and in the Supreme Court of Pennsylvania.

Respondents seek to give the impression that some new and startling question of Federal constitutional law was first injected into these cases in the petition for reargument in the Supreme Court of Pennsylvania. We have already endeavored to show that even if this be true, this Honorable Court has jurisdiction to review the Federal question by reason of the action of the Supreme Court of Pennsylvania in expressing an opinion upon it. But in reality the assertion by petitioners of impairment of right under the equal protection clause of the Federal Constitution introduced no new question into these cases. The question from the very outset was whether the valuations which the County Commissioners, sitting as a Board of Revision, placed upon petitioners' properties were relatively so unequal in pro-

portion to actual values as to lack uniformity and constitute an unlawful discrimination. The attack of petitioners through the Pennsylvania courts was primarily directed to the plan of assessment followed by the Board of Revision. The petitions and appeals from the Board of Revision to the Court of Common Pleas of Greene County alleged as grounds of complaint that (R. 5-6):

> "4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:
>
> "(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.
>
> "(b) *The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township* (except what is termed 'active coal') *at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal* and other classes of real estate in the County of Greene." (Italics ours).

Likewise the assignments of error in the Supreme Court of Pennsylvania were directed primarily to the al-

leged discriminatory nature of the plan of assessment followed by the Board of Revision, and the action of the Trial Court in approving it. Thus in the appeal of Cumberland Coal Company in Cumberland Township, the first assignment of error was (R. 482-483):

> "First. The Trial Court erred in approving the action of the Township Assessors and County Commissioners, sitting as a Board of Revision, in assessing all bituminous coal in the Pittsburgh or River vein within the territorial limits of the Township of Cumberland at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township and the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of 9 or 10 miles."

The first assignment of error in each of the other cases is similar to the one just quoted.

In the Supreme Court of Pennsylvania petitioners stated the first and primary question involved (as appears from page 20 of the brief of respondents in support of their motion to dismiss and affirm) as follows:

> "1. May Township Assessors and County Commissioners sitting as a Board of Revision, lawfully assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values, where it is undisputed that the actual or market value of

> the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of 9 or 10 miles?"

The Supreme Court of Pennsylvania in its opinion (R. 602, 603) answered the foregoing question in the affirmative and sustained the assessments without mentioning either the Constitution of Pennsylvania or the Constitution of the United States. In fact we know of no place in the record prior to the petition for reargument where either the State or Federal Constitution is expressly mentioned. This occurred, we believe, because there was not, and could not at this stage in the history of our constitutional law, be any doubt in the minds of court or counsel that the validity of the plan of assessment was to be examined and tested by the fundamental requirements of *substantial equality and uniformity* and freedom from *undue discrimination.* By these settled standards the issues in the case were tried and determined in the courts of Pennsylvania; by these same standards the issues will be determined in the Supreme Court of the United States.

Under the facts and circumstances to which we have referred, we deem it unnecessary to reply at length to respondents' third and final point made in their argument, to the effect that, "Error not assigned is not open to review in the Supreme Court of Pennsylvania." That rule of state appellate practice was for the Pennsylvania Supreme Court to invoke if it deemed the doctrine applicable. The state appellate court treated the Federal question as properly raised, and proceeded to consider and decide it; and such action, under the various decisions of this Court already cited by us, clearly estab-

lishes the basis for review by the Supreme Court of the United States.

III.

CONCLUSION.

In conclusion, we earnestly contend that if any doubt exists as to the jurisdiction of the Supreme Court of the United States to issue the writs of *certiorari* in these cases, that doubt should, in this instance, be resolved in favor of permitting the writs of *certiorari* to stand, for the reason that this is a dispute, not between private individuals, but between property owners and the taxing authorities of their sovereign state. We assume that the taxing officials, who have sworn to uphold the Constitution of the United States, are no less zealous than are petitioners to see that their acts as public officials shall not violate the Constitution, and that petitioners and their other constituents shall be accorded every protection which the Constitution of the United States affords. At the very outset of its opinion in these cases the Supreme Court of Pennsylvania stated that "the proper assessment of coal lands has been one of the most perplexing governmental questions with which the Courts of this Commonwealth have had to deal." What could be of greater aid to the Pennsylvania Courts and taxing authorities in working out the ultimate solution of this "perplexing" problem than an expression of opinion from this Court as to whether the system of assessment violates the fundamental law of the land?

Under all the circumstances to which we have referred, and more especially under the settled law as laid down by this Court, petitioners respectfully submit that they should be permitted an opportunity to plead

their fundamental rights before this Honorable Court, and that the motion of respondents to dismiss the writs of *certiorari* and affirm the judgment of the Supreme Court of Pennsylvania should be denied.

Respectfully submitted,

WILLIAM A. SEIFERT,
ARTHUR B. VAN BUSKIRK,
Counsel for Petitioners.

W. J. KYLE,
CARL E. GLOCK,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1930.

NO. 687.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 688.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 689.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 690.

CUMBERLAND COAL COMPANY, Petitioner,
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BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 691.

HENRY A. PHILLIPS, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 692.

PIEDMONT COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 693.

GREENE COUNTY COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

MOTION OF RESPONDENT TO DISMISS AND QUASH THE WRIT OF CERTIORARI AND TO AFFIRM THE JUDGMENT OF THE COURT OF COMMON PLEAS OF GREENE COUNTY AND THE SUPREME COURT OF PENNSYLVANIA.

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GREENE COUNTY COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

MOTION TO DISMISS AND AFFIRM.

Now come J. N. Scott, Otis H. Headley and Paul Debolt, County Commissioners of Greene County, Pennsylvania, by Challen W. Waychoff, A. A. Purman and Ambrose Bradley, their counsel, and moves this court to dismiss and quash the paper purporting to be a writ of

certiorari herein for want of jurisdiction in this court to grant the same and because the paper purporting to be a writ of certiorari is informal, irregular and insufficient and in support of said motion assign the following reasons:

FIRST. Because the Federal question set up in the petition for the writ of certiorari, and because of which the writ was granted, was neither set up in nor adjudicated by the Court of Common Pleas of Greene County, Pennsylvania, in which court these appeals were first heard.

SECOND. Because the Federal question presented in the petition for writ of certiorari, and because of which the writ was granted, does not have a basis in the record of these appeals in the Supreme Court of Pennsylvania, because of lack of assignment of error therein showing the proper presentation of a Federal question to that court.

THIRD. Because petitioners did not at the proper time and in the proper manner specially set up or claim some title, right, privilege or immunity under the Constitution or laws of the United States, and that the decision of the highest court of the state in which a decision could be had was against the title, right, privilege or immunity so set up or claimed.

FOURTH. Because the claim of a violation of a Federal right was not set up in accordance with Pennsylvania practice. Said claim being first advanced in the Appellate Court by the petition for reargument after final decision whereas the uniform practice of the appellate courts of Pennsylvania is to disregard question not presented to the lower court.

FIFTH. Because the Federal question now raised was not considered nor adjudicated by the Supreme

Court of Pennsylvania as shown by the refusal of the petition for reargument which was presented for the express purpose of having the Federal question considered and decided.

SIXTH. Because the assessments in question were sustained by the Pennsylvania courts on adequate state grounds, that is, a uniform plan of assessment and ratio of assessed to actual value was regularly adopted by the taxing authorities and was applied generally to all taxable property in the county, including petitioners property.

SEVENTH. Because the plan of tax assessment is not properly before this court. The only question in each appeal is whether or not one assessment as made by the taxing authorities of the county is discriminatory, unjust, unequitable and lacking in uniformity. Petitioners entirely disregard this real question involved and seek to have this court pass upon the plan of assessment in Greene County without showing any discrimination against them thereby.

And respondent also moves this court to affirm the judgments of the Court of Common Pleas of Greene County and the Supreme Court of Pennsylvania herein upon the ground that it is manifest that the paper purporting to be a writ of certiorari herein was taken for delay only and that the question upon which it is claimed that the jurisdiction of this court depends is frivolous.

CHALLEN W. WAYCHOFF,

A. A. PURMAN,

AMBROSE BRADLEY,

Counsel for Respondents.

COUNTER STATEMENT OF THE CASE.

The assessors throughout the various townships of Greene County, Pennsylvania, in the triennial assessment of 1928 valued all taxable property at what they considered to be the actual value thereof and at such rates and prices for which the same would separately bona fide sell and assessed the same at a ratio of fifty per cent of assessed to actual value.

> The assessors in Cumberland township and throughout the County of Greene did not assess land of any character, farm lands, dwelling houses, business property or coal at its actual selling value or actual market value or at the actual price or sum which lands would bring at public sale after full public notice, but they did attempt to assess all lands at a ratio of fifty per cent of its actual value limited and defined by market value, throughout the county and in the township of Cumberland. (Finding of Fact 18, R. 293).

Appellants in the court below did not except to this finding of fact, nor was it assigned as error in the Supreme Court of Pennsylvania, which court by opinion filed found that such ratio had been uniformly fixed:

> The fifty per cent ratio throughout the county having been uniformly fixed * * * (R. 604).

The Board of Revision carefully examined and corrected the valuations of all taxable property as returned by the assessors of the various townships and adopted the same ratio of assessed to actual value.

> No minute of their adoption of the fifty per cent ratio was made, but it was actually used by the Board of Revision in making the assessment in this case. (Finding of Fact 20, R. 294).

Appellants in the court below did not except to this finding of fact, nor is it assigned as error in the Supreme Court of Pennsylvania, which finding the Supreme Court of Pennsylvania sustained. (R. 604).

Petitioners appealed from the action of the Board of Revision.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed "active coal") at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene (R. 5-6).

At the hearing of these seven appeals in the trial court no testimony was offered by petitioners to show that

the assessments as made, and from which they appealed and of which they now complain, were in excess of the uniform and standard ratio adopted and applied generally throughout the entire county, that is, fifty per cent of the fair market value of their property.

Petitioners relied wholly upon testimony by which they sought to prove that two other tracts of coal in Cumberland Township were assessed below the uniform and standard ratio adopted and applied generally throughout the county. Petitioners relied wholly upon a comparison of their assessments with the assessments of the coal of Buckeye Coal Company and Crucible Fuel Company located in Cumberland township and petitioners did not then, and do not now, assert that the assessments of their property is higher than the uniform and standard ratio of fifty per cent of assessed to actual value as adopted and applied generally throughout the county.

Respondents deny that:

> The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene County, Pennsylvania, sitting as a Board of Revision is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. (Brief for petitioners, p. 3).

On the contrary respondents assert, and the record of the seven cases in the Pennsylvania courts conclusively show, that the only question for decision in each case in this court is:

Is the assessments of petitioners' coal in excess of the uniform and standard ratio of fifty per cent of assessed to actual value adopted and applied generally by the Board of Revision throughout Greene County?

ARGUMENT.

POINT I.

JURISDICTION.

The petitioners failed specially to set up or claim in the Pennsylvania courts any title, right, privilege or immunity under the Constitution of the United States or under any Federal Statute within the requirements of Section 237 of the Judicial Code, and this Court is without jurisdiction to entertain the present petition.

The record does not show the assertion of a Federal right in either the Court of Common Pleas, in which court the actions were instituted, or in the Supreme Court, the highest court of the State of Pennsylvania in which a decision could be had, and to which petitioners' appeals were taken. By opinion filed the Supreme Court decided adversely to petitioners without any mention of the Federal question.

Petitioners' attempt to raise a Federal question first appears in the petition for reargument in the Supreme Court of Pennsylvania, which petition was refused on December 8, 1930, without mention of the Federal question.

The Federal question first comes into the order refusing reargument in the *per curiam* modified order of December 16, 1930, which order was made without notice to respondent and without argument and apparently at the suggestion of petitioners for the express purpose of obtaining the writs of certiorari.

Therefore, under the decisions of this court, to which reference is hereafter made, the alleged Federal right was not specially set up or pleaded at the proper time and in the proper manner and petitioners have not brought themselves within the conditions or the provisions laid down and required by Section 237 of the Judicial Code as interpreted by this court.

As hereinbefore stated the alleged Federal question first appears in the petition for reargument in which petitioners claim that "the plan of assessment in these cases violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

To contrast this claim with the record in the Court of Common Pleas and in the Supreme Court lends emphasis to the failure of the petitioners to specially set up or claim their alleged rights in either of those courts.

Petitioners attempted to do by the petition for reargument in the Supreme Court what they should have done below and what would have secured for them a consideration of the now interjected Federal question in both courts below.

Petitioners appeals were presented to the Supreme Court on the record of the appeals from the Common Pleas in which record the Federal question now interjected did not appear.

The decisions of this court on the interpretation of the provisions of sections 237 of the Judicial Code, and similar or equivalent sections in earlier statutes, providing for a review where the aggrieved party shows that he has *"specially set up or claimed"* some *"title, right, privilege or immunity"* under treaties or statutes

of the United States, are so many and the rules are so well settled that it seems unnecessary either to discuss them in detail or to cite any number of decisions to support them.

The following propositions are, we think established beyond the possibility of attack by decisions of this court.

1. The title, right, privilege or immunity must be specially set up or claimed in the state courts in order to give this court jurisdiction in contradistinction to the rule that constitutional questions are sufficiently raised if they are "drawn in question", that is, were actually presented to and necessarily involved in the decision of the state court.

2. It must appear clearly from the record that the state court was advised that a specific Federal right was asserted.

3. The claim must be set up in accordance with state practice and is too late if first advanced in the appellate court when the practice in the state permits that court to disregard questions not properly presented in the lower court.

4. Petitioners claim of Federal right not having been set up in the Common Pleas or in the Supreme Court before final judgment such claim, coming as it does in the petition for reargument in the Supreme Court, comes too late to be considered by this court.

5. For the purpose of determining the jurisdiction of this court the petition for reargument in the Appellate Court, the petition for ceriorari to this court and the argument of counsel form no part of the record.

Sayward v. Denny, 158 U. S. 180.

There is nothing in the record of these cases which shows that petitioners made any claim of Federal right in the trial court or in the Supreme Court of Pennsylvania until after final judgment, or that said claim of Federal right was considered or adjudicated by the Supreme Court.

This court in *Fiss v. St. Louis,* 165 U. S. 273, Mr. Justice Harlan delivering the opinion, held:

> We held at the present term in *Chicago & Northwestern Railway v. Chicago,* 164 U. S. 454, 457, as had frequently before been adjudged, that this court could not review the final judgment of the highest court of the State, alleged to have denied a right protected by the Constitution of the United States, unless such right was specially set up or claimed in the state court by the party against whom the judgment was rendered. Rev. Stat. § 709.
>
> It is contended on this writ of error that the judgment below deprived the plaintiff in error of her property without due process of law, and that this result was accomplished by applying to the case a certain statute of limitations of Missouri as construed and enforced by the highest court of that State.
>
> Upon inspecting the record, we find that no Federal right was set up or claimed, in any form, until after the final decision of the case by the Supreme Court of Missouri, and then by a petition for rehearing. That petition was overruled by that court without any determination of the alleged Federal question, indeed without any allusion to it. The claim of a Federal right came too late, so far as the revisory power of this court is concerned. *Loeber*

v. Schroeder, 149 U. S. 580, 585; *Sayward v. Denny,* 158 U. S. 180, 183."

* * * * * * * *

In *El Paso & Southwestern R. R. Co. v. Eichel & Weikel,* 226 U. S. 590, the syllabus in part reads:

> This court cannot review a judgment of the State court under sec. 709, Rev. Stat., on the ground of denial of a Federal right, privilege or immunity unless the same was specially set up or claimed in the state court.

This action was brought by defendants in error in the district court of El Paso County, Texas, to recover damages for certain alleged breaches of contract committed by the railroad company. Damages were recovered and the judgment awarding them affirmed by the Court of Civil Appeals. The Supreme Court of Texas denied a petition for writ of error to review the judgment in that court and a writ of error was then sued out under section 709, Rev. Stat. to review the judgment of the court of Civil Appeals.

Mr. Justice Pitney, in the opinion (page 598), said:

> After the denial by the latter court (Court of Civil Appeals), of a motion for rehearing, application was made to the Supreme Court of Texas for a writ of error, to the end that that court might review the judgment. In this application alleged Federal rights were for the first time asserted, it being assigned for error that the trial court and the Court of Civil Appeals had "refused to give full faith and credit to the public acts and laws of the territory of New Mexico," etc., etc. The application was considered and refused and a motion for a rehearing thereon was overruled. But since the Court of Civil Appeals is the highest court of the

state that rendered a judgment reviewable here (*Stanley v. Schwalby,* 162 U. S. 255, 269; *Bacon v. Texas,* 163 U. S. 207, 215) the assertion of Federal rights in an unsuccessful application to the Supreme Court of the State for a writ of error raises no question that is reviewable in this court. Writ of Error dismissed.

An attempt to raise a Federal question appearing first in an application to the Supreme Court for rehearing comes too late.

Bilby et al. v. Stewart et al., 246 U. S. 255.

Where the ground presented in a petition for certiorari, and because of which a writ is granted, prove to have no substantial basis in the record because of lack of assignment of error therein showing the proper presentation of a Federal question to the Appellate Court, the writ will be dismissed.

Ellison et al. v. Koswig, 276 U. S. 598.

This case was a certiorari from this court to the Superior Court of Pennsylvania and, hence, it deals with Pennsylvania practice.

Other cases cited in the opinion:

Missouri Pacific R. R. Co. v. Hanna, 266 U. S. 184;

Chicago I. & L. Ry. Co. v. McGuire, 196 U. S. 128;

El Paso & Southwestern R. R. Co. v. Eichel, supra.

In *Capital City Dairy Co. v. Ohio,* 183 U. S. 238, it was held that this court on error to a state court cannot consider an alleged Federal question, when it appears

that the Federal right thus relied upon had not been by adequate specifications, called to the attention of the state court and had not been considered by it, it not being necessarily involved in the determination of the cause.

After these appeals had been disposed of by the Supreme Court of Pennsylvania, petitioners conceived and for the first time asserted in a petition to that court for reargument a Federal question: "That the plan of assessment in this case violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States" (R. 615).

The Supreme Court on December 8, 1930, without reference to the Federal question appearing in the petition for reargument, refused reargument (R. 620).

Eight days later, and after the Supreme Court had adjourned, petitioners without notice to respondents obtained the modified order of December 8, 1930 (R. 620), for the express purpose of obtaining these writs of certiorari.

The net result of all this seems to be that petitioners failed wholly to specially set up or claim relief under any Federal Statute or to set up or claim the violation of any constitutional provision in either of the Pennsylvania courts until it was too late to make or assert such claim.

The trend of the decided cases in this court is, that the party claiming to be aggrieved must specially call his alleged Federal right to the attenion of the state courts. This rule has been adopted by this court in many cases, too numerous for citation, and this rule applies in this case.

Petitioners did not comply with the requirements of Pennsylvania practice which this court has said is a prerequisite to the allowance of an appeal. Had petitioners informed this court at the time the writs of certiorari were awarded that the requirements of Pennsylvania practice had not been complied with it is extremely doubtful that the writs would have been allowed.

POINT II.

The Supreme Court of Pennsylvania did not consider or adjudicate the Federal question on the petition for reargument as required by this Court.

An inspection of the record shows that the Federal question was first raised in the petition to the Supreme Court of Pennsylvania for reargument which petition was presented to that court on December 2, 1930, and reargument refused by that court on December 8, 1930, and while that court was in session. The *per curiam* modified order of the Supreme Court of Pennsylvania, was made December 16, 1930, and after that court had adjourned.

The modified order of December 16, 1930, reads as follows:

> And now, December 16, 1930, the order of December 8, 1930, is modified to read as follows: Upon consideration of the petition for reargument, the court being of opinion that the plan of assessment in these cases does not violate the equal protection clause of the fourteenth amendment to the Constitution of the United States, reargument is refused.
>
> PER CURIAM.

In *Consolidated Turnpike Co. v. Norfolk & O. V. Ry. Co.*, 228 U. S. 326, Mr. Justice Lurton in delivering the opinion of this court (p. 333), said:

> No question of the impairment of the obligation of a contract was decided in the trial court nor in the Supreme Court, nor is any such question assigned as error here, nor presented in argument. Upon a petition for a rehearing filed in the Supreme Court one of several grounds stated was, that a decree taking the land in question without compensation for the improvements thereon would be "a taking without due process of law in violation not only of the constitution of Virginia, but of the Fourteenth Amendment to the Constitution of the United States." This application was refused, without opinion, the judgment entry being in these words:
>
> "The court having maturely considered the petition aforesaid, the same is denied."
>
> The words "maturely considered" do not import any decision of the question made. Just such an entry has been held to be no more than a refusal to rehear the case: *Forbes v. State Council,* 216 U. S. 396.
>
> Nothing is better settled than that it is too late to raise a Federal question for the first time in a petition for a rehearing, after the final judgment of the state court of last resort. If, however, the state court actually entertains the petition and decides the Federal question, and this appears by the record, the requirement of § 709 that the right shall be specially set up and denied is complied with. *McCorquodale v. Texas,* 211 U. S. 432; *Mallett v. North Carolina,* 181 U. S. 589; *McMillen v. Mining Company,* 197 U. S. 343, 347.

Having neglected to raise any Federal question before the final judgment in the State Supreme Court, and having failed to obtain a rehearing that the question might thereby be raised and a decision obtained upon it, the plaintiffs, in error have endeavored to show that in fact the Supreme Court of Virginia did rehear the case upon their petition and did decide the Federal question, therein for the first time raised, adversely, by obtaining the certificate of the Chief Justice of the court, months after the court had handed down its final opinion, that the court, "refused the said petition for a rehearing on the ground *inter alia* that the decree or decision of this court * * * did not constitute a taking of the property of the defendants in error without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and that the said defendants in error were not thereby deprived of any rights under said Amendment." This certificate was never made the order of the court and a part of the record, as in *Marvin v. Trout,* 199 U. S. 212, where it was held "perhaps sufficient" to show what Federal question was decided in a case where no opinion was filed. But that such a certificate can do no more than make more definite and certain that which otherwise may be insufficiently shown by the record proper is the settled rule of this court. That in itself it cannot confer jurisdiction is too plain for controversy. *Seaboard Air Line v. Duvall,* 255 U. S. 477; *Home for Incurables v. New York,* 187 U. S. 155. At the utmost it may aid to the understanding of the record. *Gulf & Ship Island Railway v. Hewes,* 183 U. S. 66.

For the reasons stated, the writ of error must be dismissed.

In *McCorquodale v. Texas,* 211 U. S. 432, the syllabus reads:

> "It is too late to raise the Federal question for the first time in petition for rehearing in the state court of last resort, unless, and it must so appear, that court actually entertains the motion and passes upon the Federal question; where the order is merely a denial of the motion the writ of error will be dismissed."

Mr. Justice McKenna in delivering the opinion of the court (p. 436-7), said:

> The order of the court on the motion for a rehearing was as follows:
>
> "This cause came on to be heard on appellant's motion for a rehearing, and the same considered by the court said motion is overruled."
>
> This court has decided many times that it is too late to raise a Federal question for the first time in a petition for rehearing in the court of last resort of a State after that court has pronounced its final decision. *Loeber v. Schroeder,* 149 U. S. 580, 585; *Pim v. St. Louis,* 163 U. S. 273. It is true that we have also decided that if the court entertains the motion and passes on the Federal question, we will review its decision. But it must appear that the court has done so. *Mallet v. North Carolina,* 181 U. S. 589; *Leigh v. Green,* 193 U. S. 79; *Corkran Oil Co. v. Arnaudet,* 199 U. S. 182, 193; *Fullerton v. Texas,* 196 U. S. 192; *McMillen v. Ferrum,* 197 U. S. 343. It can hardly be said to so appear in the case at bar. The order of the court is nothing more than a denial of the motion. In other words, it expresses no more than would be implied from a simple denial of the motion.

In *Forbes v. State Council, etc.*, 216 U. S. 396, Mr. Justice Day in delivering the opinion (p. 398-9) said:

> In passing upon the petition for rehearing the Supreme Court of Appeals of Virginia said: "On mature consideration of the petition of the plaintiff in error to set aside the judgment entered herein on January 16, 1908, and to grant a rehearing of said cause, the prayer of said petition is denied."
>
> It has been many times held in this court that an attempt to introduce a Federal question into the record for the first time by a petition for rehearing is too late. *Loeber v. Schroeder*, 149 U. S. 580, 585; *Pim v. St. Louis*, 165 U. S. 273.
>
> There is an exceptoin to this rule when it appears that the court below entertained the motion for rehearing, and passed upon the Federal question. But it must appear that such Federal question was in fact passed upon in considering the motion for rehearing; if not, the general rule applies. *Mallett v. North Carolina*, 181 U. S. 589; *Leigh v. Green*, 193 U. S. 79; *Corkran Oil Co. v. Arnaudet*, 199 U. S. 182; *McMillen v. Ferrum*, 197 U. S. 343; *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 112, 118.
>
> But it is alleged, the memorandum which we have quoted shows that the Virginia court must have considered and passed upon the Federal question made in the petition for a rehearing. Except that the order is said to be upon "mature" consideration, it is almost word for word the order on rehearing reviewed in *McCorquodale v. Texas*, 211 U. S. 432, which was held to amount to no more than a denial of the motion. See 211 U. S. 437. In that case the rule was again laid down that it was too late to raise a Federal question upon a petition for

rehearing unless the Federal question was passed upon in ruling upon the petition.

It results that the writ of error in this case must be dismissed.

In the case at bar, the Supreme Court of Pennsylvania having adjourned on December 5, 1930, the order of December 8, 1930, refusing reargument was made by the court while in session at which session the Federal question was not considered in so far as the record shows. Then on December 16, 1930, after the Supreme Court had adjourned the *per curiam* modified order was made, but in that order the Federal question raised in the motion for rehearing was not in fact passed upon by the court and the modified order is nothing more than a denial of the motion and the word used in the modified order expresses no more than would be implied from a simple denial of the motion, and, hence, the general rule as laid down by this court, that an attempt to introduce a Federal question into the record for the first time by a petition for rehearing is too late, must prevail.

POINT III.

Error not assigned is not open to review in the Supreme Court of Pennsylvania.

Rule 50 of the Rules of the Supreme Court of Pennsylvania provides:

> The statement of the question involved must set forth each question separately, in the briefest and most general terms, without names, dates, amounts or particulars of any kind, and whenever possible, each question must be followed immediately by an answer stating simply whether it was affirmed, negatived, qualified or not answered by the court

below. If a qualified answer was given to the question, appellant shall indicate, most briefly, the nature of the qualification; or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court below. The questions and answers in their entirety should not ordinarily exceed twenty lines, must never exceed one page, and must always be printed in type at least as large as point 10, on the first page of the Brief, without any other matter appearing thereon. This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not thus set forth in or necessarily suggested by the statement of questions involved.

In compliance with the requirements of the above rule appellants in their brief filed in the appeals, stated the questions involved therein as follows:

1. May Township Assessors and County Commissioners sitting as a Board of Revision, lawfully assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values, where it is undisputed that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of 9 or 10 miles?

   The Court approved this assessment.

2. May Township Assessors and County Commissioners sitting as a Board of Revision, lawfully refuse to allow the owner of coal alone a deduction of six per cent (6%) from the acreage, where they allow such deduction to the person or corporation owning both coal and surface or surface alone?

   The Court approved this disallowance.

In addition to this rule the practice in the Supreme Court of Pennsylvania as relates to assignments of error is well settled. Every error must be specifically pointed out in the assignments of error and error not assigned is not open to review and this court will recognize and be governed by the rules of practice in a state court prescribing the requirements to be observed in order to save a question for review in that court.

In *Consolidated Cigar Corp. v. Corbin,* 285 Pa. 273, defendant failed to call attention of the court to the fact that the transaction involved was interstate in character and that a foreign corporation might carry on a single transaction of that nature and be protected by the Federal Constitution from the ordinary consequences of its failure to register in Pennsylvania. Defendants first asserted that phase of the issue on their appeal to the Supreme Court. That court held that "* * * this contention should have been made to the court below * * * and not to this court as an original contention". Citing certain Pennsylvania and decisions of this court (p. 281). "Where facts are present in the record on which a constitutional question * * * is sought to be based but the question was neither raised in or passed on by the court below, it will not be considered on appeal by this court" (p. 281).

The court then quotes from *Central Union Telephone Co. v. City of Edwardsville,* 46 Pa. Sup. Ct. 90, 91, a decision of this court, *Hulbert v. Chicago,* 202 U. S. 275, 280, as follows:

> "Without any doubt it rests upon each state to prescribe the jurisdiction of its appellate courts * * * and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable where Federal rights are in controversy then when the case turns entirely upon questions of local or general law".

Other Pennsylvania cases:

> *Clarion Borough Petition,* 275 Pa. 175;
> *Hart v. Fuller Canneries Co.,* 263 Pa. 238;
> *Chartiers Creek Bridge,* 235 Pa. 365.

The constitutional question now interjected into these cases was not raised in, called to the attention of, passed upon, or decided by the Court of Common Pleas. Neither was such question stated as being involved in the appeals to the Supreme Court nor was it raised therein by assignment of error or argued in the Supreme Court of Pennsylvania.

This court has repeatedly said that its jurisdiction to review the final judgment of the highest court of a state under Section 237 of the Judicial Code when there is claimed in it any title, right, privilege or immunity under the Constitution of the United States and the decision is either in favor of or against the title, right, privilege or immunity specially set up or claimed under the constitution that such claim must be asserted at the proper time and in the proper manner by pleading, mo-

tion or other appropriate action under the state system of pleading and practice. And upon the question whether or not such a claim has been so asserted the decision of the state court is binding upon this court when it is clear that such decision was not rendered in a spirit of evasion for the purpose of defeating the claim of Federal right.

No Federal question appearing before the trial court nor in the record of the appeals to the Supreme Court the adverse decision of both lower courts could, by no stretch of the imagination have been rendered in a spirit of evasion for the purpose of defeating the claim of Federal right.

Hulbert v. Chicago, 202 U. S. 275;
Willoughby v. Chicago, 235 U. S. 45;
Keokuk Bridge Co. v. Illinois, 175 U. S. 626.

A Federal question which will sustain a writ of error from the Federal Supreme Court to a state court cannot be first raised in the assignment of error in the Federal Court.

Matters v. Commercial Loan & T. Co., 216 U. S. 613.

The assignment of errors in the Federal Supreme Court cannot raise a Federal question reviewable on writ of error to a state court, but such review is confined to the assignments of error made and passed upon in the judgment brought up for review.

Waters-Pierce Oil Co. v. Texas, 212 U. S. 112.

CONCLUSION.

The writs of certiorari should be dismissed, or, in the alternative, the judgment of the Pennsylvania Court should be affirmed.

Respectfully submitted,

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Counsel for Respondents.

Nos. 7 to 13

AUG

CHARLES

Supreme Court of the United States

OCTOBER TERM, 1930.

NO. 687.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 688.

CUMBERLAND COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 689.

CUMBERLAND COAL COMPANY, Petitioner,
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NO. 690.

CUMBERLAND COAL COMPANY, Petitioner,
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BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 691.

HENRY A. PHILLIPS, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 692.

PIEDMONT COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

NO. 693.

GREENE COUNTY COAL COMPANY, Petitioner,
v.
BOARD OF REVISION OF TAX ASSESSMENTS IN GREENE COUNTY, PENNSYLVANIA.

On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

BRIEF FOR RESPONDENT.

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On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.

I.

COUNTER-STATEMENT OF CASE.

The statement of the case appearing in the Brief for Petitioners, when considered in the light of the facts appearing in the Record, is so misleading and unfounded in fact that respondents, in order that this court may see

at a glance the issue that was tried in the Common Pleas and was appealed to and determined by the Supreme Court of Pennsylvania, feel justified in stating the following counter-statement of the case.

The assessors throughout the various townships of Greene county, Pennsylvania, in the triennial assessment of 1928 valued all taxable property at what they considered to be the actual value thereof and at such rates and prices for which the same would separately bona fide sell and assessed the same at a ratio of fifty per cent of assessed to actual value.

> The assessors in Cumberland township and throughout the County of Greene did not assess land of any character, farm lands, dwelling houses, business property or coal at its actual selling value or actual market value or at the actual price or sum which lands would bring at public sale after full public notice, but they did attempt to assess all lands at a ratio of fifty per cent of its actual value limited and defined by market value throughout the county and in the township of Cumberland. (Finding of Fact 18, R. 293).

Appellants in the court below did not except to this finding of fact, nor was it assigned as error in the Supreme Court of Pennsylvania, which court by opinion filed found that such ratio had been uniformly fixed:

> The fifty per cent ratio through the county having been uniformly fixed * * * (R. 604).

The Board of Revision carefully examined and corrected the valuations of all taxable property as returned by the assessors of the various townships and adopted the same ratio of assessed to actual value.

> No minute of their adoption of the fifty per cent ratio was made, but it was actually used by the

Board of Revision in making the assessment in this case. (Finding of Fact 20, R. 294).

Appellants in the court below did not except to this finding of fact, nor is it assigned as error in the Supreme Court of Pennsylvania, which finding the Supreme Court of Pennsylvania sustained (R. 604).

Petitioners appealed from the action of the Board of Revision.

4. Your petitioner avers that said assessment is unjust and inequitable for the following reasons:

(a) Said Assessors and Commissioners have discriminated against your petitioner in favor of the owners of other classes of taxable property within said county by assessing the coal of your petitioner at a higher relative rate than the other classes of real estate are assessed, and as a result the said coal of your petitioner will be required to pay an unjust, unfair and undue proportion of the taxes levied and assessed by the Commissioners of said County and by the School Directors and Supervisors of said Township.

(b) The valuation placed upon said coal of your petitioner is unjust, inequitable, discriminatory and lacks uniformity, as the said Commissioners have assessed all coal in the same township (except what is termed "actual coal") at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene (R. 5-6).

At the hearing of these seven appeals in the trial court no testimony was offered by petitioners to show that the

assessments as made, and from which they appealed and of which they now complain, were in excess of the uniform and standard ratio adopted and applied generally throughout the entire county, that is, fifty per cent of the fair market value of their property.

Petitioners relied wholly upon testimony by which they sought to prove that two other tracts of coal in Cumberland township were assessed below the uniform and standard ratio adopted and applied generally throughout the county. Petitioners relied wholly upon a comparison of their assessments with the assessments of the coal of Buckeye Coal Company and Crucible Fuel Company located in Cumberland township and petitioners did not then, and do not now, assert that the assessments of their property is higher than the uniform and standard ratio of fifty per cent of assessed to actual value as adopted and applied generally throughout the county.

Respondents deny that:

> The question presented in these seven cases is whether the plan of assessment of coal property for taxation pursued by the Commissioners of Greene county, Pennsylvania, sitting as a Board of Revision is violative of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States (Brief for petitioners, p. 3).

On the contrary respondents assert, and the record of the seven cases in the Pennsylvania courts conclusively show, that the only question for decision in each case in this court is:

Is the assessment of petitioners' coal in excess of the uniform and standard ratio of fifty per cent of assessed to actual value adopted and applied generally by the Board of Revision throughout Greene county?

II.

STATEMENT OF QUESTIONS INVOLVED.

1. Does an assessment of taxable property discriminate which is made by the taxing authorities in good faith and in conformity with the uniform system throughout the state?

2. Will the Supreme Court of the United States interfere with a given assessment in any state when it is not shown that such assessment was systematically, intentionally and arbitrarily discriminatory and adopted as a practice, and this without regard to what plan or system of assessment was used by the taxing authorities in arriving at such assessment?

3. By what means may the legality of an assessment be tested,—by comparison with the assessment of one or two tracts or parcels of like property in the same township, or by comparison with the general assessment of all taxable property in the county?

4. Do petitioners have standing to complain where the record shows that a uniform standard ratio of fifty per cent of assessed to actual market value was adopted generally throughout the county when they fail to show that their properties are assessed at above fifty per cent of their actual market value?

III.

ARGUMENT.

The Plan of Assessment Adopted by the Board of Revision Does Not Violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(a) Pennsylvania System of Assessment for Taxation.

It is difficult for respondents to understand the position of petitioners.

In the trial court the question at issue was whether the assessors and commissioners had, or had not, discriminated against petitioners in favor of the owners of other classes of taxable property within the county.

The trial court found that petitioner's coal lands were assessed in accordance with the uniform and standard ratio adopted and applied generally throughout the county upon all classes of taxable property (R. par. 5, p. 4 a).

The record of these seven appeals in the Supreme Court of Pennsylvania shows that this same question was there considered and adjudicated (R. 620).

In both the trial and appellate courts the system of assessments was an incident only to the main question at issue.

In this court petitioners have abandoned the question tried in and adjudicated by the state courts and, as

the basis of their claim now attempt to make out that the system of assessment is violative of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States (R. 615).

Of course, the failure of petitioners to prove in the trial court that their properties were not assessed at more than fifty per cent of their actual market value explains their reason for this change but, nevertheless, respondents assert that this change of position is not justified. This court will pass upon only the questions presented to and adjudicated by the Pennsylvania courts.

For this court to find that the plan or system of assessment in Pennsylvania might result in inequalities or discriminations without at the same time finding that the plan or system of assessments did, as a matter of fact, result in inequalities and discriminations against the petitioners in the assessments from which they appealed, would be futile.

It will not be denied that the Commonwealth of Pennsylvania has a uniform and standard system of assessment for all classes of taxable property. If the assessments in question were made in accordance with this uniform and standard system petitioners have no just complaint.

The Constitution of Pennsylvania provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

The territorial limits of the authority levying the tax is the county. *Lehigh & Wilkes-Barre Coal Co. v. Luzerne Co.*, 225 Pa. 267.

Section 4, Act May 15, 1841, P. L. 393 (Pennsylvania Statutes 1920, section 20590, quoted in the petition for writs of certiorari, Appendix p. 27), provides that it shall be the duty of the several assessors to assess, rate and value all objects of taxation, whether for state, county, city, district, ward, township or borough purposes according to the actual value thereof, and at such rates and prices, for which the same would separately bona fide sell and return such assessment or valuation into the office of the county commissioners, after the same shall have been carefully examined and corrected it shall be lawful for said commissioners, if they believe any property or thing made taxable has been assessed and valued below its actual value to raise the same to the actual value thereof or if the same has been assessed and valued above its actual value, to reduce the same thereto. Provided, that in no case the said commissioners shall impose a different rate per centum on different townships in their county, but the same shall be equal throughout and all rates shall be levied on the assessment as returned and corrected.

Petitioner's taxable property is the Pittsburgh or River Vein of coal and in the coal districts is commonly called *"coal land"*. This coal vein is general and is of uniform thickness and quality throughout Greene county (Findings of Fact 7, R. 357).

If, however, the record of these seven cases shows that the assessments complained of were not made in accordance with such uniform and standard system of assessments but were intentionally and arbitrarily made and injury resulted to petitioners thereby, then petitioners would be entitled to relief from such assessments.

This court, however, will not undertake to correct an isolated case unless it is shown by evidence suffici-

ently clear to establish that the Board of Revision entertained or is chargeable with an intentional purpose or design to discriminate.

The Legislature of Pennsylvania has fixed the unit of assessment to be the county and the standard of measurement to be the actual value of the subject assessed.

The courts of Pennsylvania have uniformly held that the Board of Revision may fix a ratio of assessed to actual value generally throughout the county or district and that such ratio generally applied is a compliance with the law.

Phila. & Reading C. & I. Co. v. Northumberland Co. Com., 229 Pa. 460;
Penna. Coal Co's. Assessment, 257 Pa. 320.

This court, in *Kelly v. City of Pittsburgh*, 104 U. S. 78, held that the various states have the legal right to fix the unit of taxation and this court will not interfere so long as the assessments within such unit are uniform.

This court has held that the provisions of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States do not prevent a state from adjusting its system of taxation in all proper and reasonable ways, or compel a state to adopt an iron rule of equal taxation. And it is not the policy of this court to interfere with the revenue laws of the states.

Bells Gap R. Co. v. Pennsylvania, 134 U. S. 232;
F. & Bank v. Pennsylvania, 167 U. S. 463;
New Orleans City & L. R. Co. v. New Orleans, 143 U. S. 192;
Memphis Gas L. Co. v. Tax Dist. of Shelby Co., 109 U. S. 398.

(b) Petitioners' Change of Position.

On the trial of these seven cases in the court below petitioners attempted to show that the assessment placed upon their coal was unjust, inequitable, discriminatory and lacks uniformity, it having been assessed without regard to remoteness or accessibility to market, cost of operation or means of transportation and regardless of the difference in value of other coal and other classes of real estate in the county.

In this court petitioners have abandoned their position and now seek to show intentional and arbitrary discrimination by the plan or system of assessment.

The discrimination in this plan or system of assessments, and of which petitioners now complain, relates to coal only, whereas the plan or system of assessments adopted by the Board of Revision covers and embraces the assessments of all taxable property, farm land, dwelling and business houses and vacant lots as well as coal lands. Petitioners admit here that all taxable property in Greene county was assessed at the uniform and standard ratio of fifty per cent of assessed to actual value, except possibly a few isolated tracts or parcels of coal land. Petitioners attempt to show intentional and arbitrary discrimination in the assessment of their coal land by quoting, in part, from the testimony of county commissioners J. N. Scott and Paul Debolt (Brief for petitioners, pp. 7, 8 and 9).

The testimony quoted is correctly quoted but it is misleading when viewed and considered in the light of the entire testimony of County Commissioners J. N. Scott and Paul Debold, a part of which respondents quote as follows:

On cross examination by Mr. Samuel McClay (R. 174-175), Mr. J. N. Scott testified:

"Q. What did you regard the coal fronting on the River in Cumberland Township would be worth?

A. Depend on what purpose you would hold it. Certain amount of river front is an advantage.

Q. How much river front?

A. Sufficient for plant.

Q. Would not need any more than that?

A. Do not see why they would.

Q. If we were trying to get into the coal how much river front would you allow for a particular value in excess of the coal back?

A. Usually only enough for one opening, that does not take very much room.

Q. How much does it take?

A. Half mile of river front would be all any company could use.

Q. Extending back how far?

A. It would be no disadvantage how much they had. I am not going to give you inside plan of a coal mine.

Q. What is your idea of the value of coal fronting on the river and to what extent going back that value is?

A. The value of coal on the river where it is navigable is undoubtedly greater than that back especially if the company ships it by water. Buckeye puts itself in the same class as Mather because they both ship by rail and Mather is no ways near the river and in that case the river does not seem to be an advantage to Buckeye except the coal is nearer the surface there.

Q. Now Mr. Scott I am trying to get at what purchasers would want and what would enter into

their mind in making purchases of coal. You have talked about the average price of $600.00, will you tell us what the front coal two or three miles extending back and having a frontage of about two miles on the river would be worth?

A. The front coal might get very valuable. It certainly would not be less than $1000.00, it would depend on circumstances, by carrying the front at $1000.00 and the back at $500.00 it would get an average of $750.00."

On direct examination by Mr. Waychoff (R. 180), Mr. Debolt testified:

"Q. Does not make any difference to your judgment whether coal lies 6, 8 or 10 miles back, or right along by the side (of Monongahela River)?

A. Yes, but if you have an opening to the river it don't need so much river frontage."

There is nothing in the record that shows that the plan or system of assessments resulted in discrimination in the assessment of the petitioners' coal land. The only testimony offered by petitioners that might even tend to show discrimination is the testimony in regard to petitioners' coal land in Cumberland township and all this testimony relates not to a comparison of the assessment of their property with the general uniform assessments throughout the county but by a comparison of the assessment of their coal land with the assessment of a few, one or two, certain isolated tracts or parcels of coal lands located in Cumberland township and adjoining the coal land of petitioner, Cumberland Coal Company, therein.

In *Sunday Lake Iron Co. v. Wakefield Township,* 247 U. S. 350, a case seemingly relied upon by the peti-

tioners as in point with the cases at bar, the matter for consideration was the claim that contrary to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States the State Board of Tax Assessors, which assessed the property of the Iron Company in 1911, assessed the same at full value whereas other lands throughout the county were generally assessed at not exceeding one-third of their actual worth. This fact was admitted.

But this court, Mr. Justice McReynolds in delivering the opinion, said:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic under-valuation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35, 37. It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more—something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party. (Citing many cases.)
>
> The record discloses facts that renders it more than probable that plaintiff in error's mines were assessed for the year 1911 (but not before or afterwards) relatively higher than other lands within

> the county although the state enjoined the same rule for all. But we are unable to conclude that the evidence suffices clearly to establish that the state board entertained or is chargeable with any purpose or design to discriminate. Its action is not incompatible with an honest effort in new and difficult circumstances to adopt valuations not relatively unjust or unequal. * * *"

An inspection of the record of these seven cases will convince this court: (a) That petitioners' property was assessed upon the same uniform and standard ratio of fifty per cent of assessed to actual value as adopted and applied generally throughout the county of Greene; (b) That there is not a word of testimony therein that shows, or tends to show, that the Board of Revision in making the 1928 triennial assessment is chargeable with any purpose or design to intentionally and systematically overvalue petitioners' property or to undervalue like property of others in the same neighborhood; (c) That there is nothing in the record which in effect amounts to an intentional violation of the essential principle of practical uniformity, or that the Board of Revision by the assessment in question denied petitioners the equal protection provided by law.

Hence, this court must conclude, as it concluded in the Sunday Lake case, that the evidence in these seven cases does not establish that the Board of Revision in making the 1928 triennial assessment entertained, or is chargeable with any purpose or design to discriminate or that its action is not incompatible with an honest effort to adopt valuations not relatively unjust or unequal.

(c) Township Method of Assessment.

Petitioners have conceived the idea that coal land in a single township should be divided into two or more zones and assessed and valued with reference to its proximity to or remoteness from the Monongahela River.

No such plan of assessment of coal lands has been adopted by the taxing authorities of any county within Pennsylvania or elsewhere and no such method can be legally adopted under the present laws of Pennsylvania. The plan or system of assessment here complained of is the plan or system adopted throughout the state of Pennsylvania.

Mr. George S. Baton, an expert coal engineer, called by petitioners in the hearing of these appeals in the court below, on cross examination testified (R. 69):

"Q. Are you acquainted with developments (assessments) in Washington County?
A. Yes.
Q. Is it by townships as in Greene?
A. Yes.
Q. Are you acquainted with the method of assessment as in Fayette county?
A. Yes.
Q. Is it in townships as in Greene?
A. I think so.
Q. In Westmoreland, are you acquainted?
A. I am.
Q. Is it by townships as in Greene?
A. Yes I should say it was.
Q. Do you know of any county in the state of Pennsylvania where the zoning system which you recommend has been adopted?

A. I don't know of any county similarly situated to Greene county.
Q. Do you know of any county in the United States that should (has been) zoned as you say Greene County should be zoned?
A. I don't know of any."

Mr. John M. Rayburn, another expert coal engineer called by petitioners in the hearing of these appeals in the court below on cross examination testified (R. 131):

"Q. Your idea is it should be assessed in zones about three miles in width?
A. Yes.
Q. Do you know how other counties in the state assess as to zones or townships?
A. Most all other counties assess in townships.
Q. Do you know any counties that assess in the manner you propose should be done?
A. I do not. In a general way they have a uniform price in Fayette County, while it is assessed by townships it is uniform.
Q. That is because it is farther developed?
A. I would not say that.
Q. Do you mean to tell me it is more uniform than in Greene county?
A. The valuation is."

From this testimony of petitioners' expert coal engineers it is manifest that the assessments in these cases were in strict conformity with the plan or system of assessment of coal land throughout Pennsylvania.

Petitioners' sole complaint is that their coal lands are assessed and valued at a higher relative rate of valuation than certain other isolated tracts of coal lands. They disregard entirely the admitted fact that all the

thousands of other taxable properties, farm lands, dwelling and business houses, vacant lots and all other coal lands in Greene county are assessed in conformity with the uniform and standard plan or system of assessment adopted generally throughout the county.

Again we call this court's attention to the testimony of Mr. George S. Baton (R. 78):

"Q. You are not undertaking to say $260.00 is too high, you are saying that the comparative value between it (Cumberland Township) and Monongahela Township is too high?

A. Yes, sir."

This comparison of petitioners' assessments with the assessments of certain isolated tracts was used by all petitioners' witnesses.

Respondents, without fear of contradiction, assert that the record will show that the market value of petitioners' coal lands in each and every township from the assessment of which petitioners appeal is more than double the assessed value thereof as fixed and determined by the Board of Revision.

(d) Petitioners' Exhibit "B"—What It Shows.

On the trial of these appeals in the court below petitioners offered in evidence generally the map, a copy of which is attached to their brief filed in this court, and having offered the map in evidence generally it is competent for any and all purposes. While this map is misleading because of the fact that the coal lands of Cumberland Coal Company from the assessment of which they have appealed is marked in colors and the coal lands of Cumberland Coal Company in Whiteley,

Franklin, Jefferson and Monongahela townships and in certain boroughs is not marked in color, yet it shows the coal lands of petitioner Cumberland Coal Company, located in Cumberland Township to consist of one contiguous block of 9237 acres; in Greene township 11956 acres, (practically all the coal in said township except that owned by H. C. Frick Coke Company); in Perry township 3126 acres and in Wayne township 6012 acres. Cumberland Coal Company appealed from the assessment of its coal land in each of the four named townships.

In addition to this acreage of coal land this map shows, although not marked in colors, that Cumberland Coal Company owns 18429 acres in Whiteley township, (all the coal in said township); 804 acres in Dunkard township; 1924 acres in Monongahela township; 3924 acres in Franklin township; 7800 acres in Jefferson township; 63 acres in Jefferson Borough; 412 acres in Rices Landing Borough and 39 acres in Carmichaels Borough. Thus, this map shows that Cumberland Coal Company owns one contiguous block of 64,793 acres of coal lands in these various townships and boroughs.

This map further shows that petitioner Henry A. Phillips owns 6900 acres of coal land in Wayne township; Piedmont Coal Company owns 3955 acres of coal lands in Wayne township and Greene County Coal Company owns 3207 acres of coal land in Perry township. No appeals were taken from the assessments in Whiteley, Franklin, Monongahela and Jefferson townships or in Jefferson and Rices Landing borough.

Had Cumberland Coal Company taken appeals from the assessment of its coal land in Jefferson or Monongahela townships, or in Rices Landing Borough, any one or

all, such appeal or appeals would have disclosed the fact that Cumberland Coal Company owns a large frontage on the Monongahela River and the Chartiers Southern Railroad, which is a part of the contiguous block of coal land of 64,793 acres above mentioned and making available to market the entire block of coal of the company by both river and rail transportation, and thus said company gained the benefits of such frontage, if such frontage is of benefit.

(e) Admission of Mr. Samuel McClay.

On the trial of these cases Mr. Samuel McClay, President of Cumberland Coal Company, admitted (R. 79), that a majority of the stock of the H. C. Frick Coke Company is owned by the United States Steel Corporation and nearly all of the shares of the Cumberland Coal Company are owned by the United States Steel Corporation and that the H. C. Frick Coke Company is an operating company and the Cumberland Coal Company is not at present an operating company.

This admission having been made, exhibit B, attached to Brief for Petitioners, shows that H. C. Frick Coke Company owns 2607 acres of coal land in Jefferson Township, 32 acres in Rices Landing Borough and 2191 acres of coal land in Monongahela Township, all of which coal land in both townships and in the borough of Rices Landing in contiguous to the coal lands of Cumberland Coal Company in Greene, Cumberland and Jefferson Townships and Rices Landing Borough. This exhibit shows that the coal land of H. C. Frick Coke Company in Jefferson Township and Rices Landing Borough has miles of frontage on the Monongahela River and upon the Chartiers Southern Railroad.

Where coal is held in large contiguous blocks it is so assessed in the township in which it is located. In fact the identity of the various tracts comprising a block has been long since lost to the taxing authorities. Owners of large blocks of coal insist that it be assessed as a single block of the total acreage and the taxing authorities have complied with their request and adopted their methods, using the township as the unit for assessment unless single tracts of a block be divided by county, township or borough lines in which case, under the provisions of the Act of April 27, 1903, P. L. 326 (Appendix, p. 22) assessment is made of the parts as located.

The fact that petitioners' coal land are in large contiguous blocks of such size as to justify large expenditures in the development thereof and the fact that the coal of the petitioners is contiguous and is capable of being handled or dealt as one property gives additional value to every acre of coal therein over and above the value of small parcels of coal held by separate owners in the same township and with which separate and isolated tracts or parcels of coal lands petitioners now seek to compare values.

(f) Conclusion.

The good faith of the Board of Revision and the validity of their action in making the triennial assessment of 1928 is presumed until the contrary is shown and the contrary is not shown in these cases.

When the good faith of the Board of Revision is assailed the burden of proof is upon the complaining party. And in the cases at bar there is no evidence to show that the Board of Revision in making the 1928 assessment systematically and intentionally discriminated against petitioners and in favor of the owners of other

classes of property and petitioners have not shown that the assessment if discriminatory in any respect was systematically and intentionally discriminatory and adopted as a practice by the Board of Revision in making the 1928 triennial assessment.

An examination of the record will convince this court that respondents proved in every instance of assessment of petitioners' coal lands that the actual value was double, or more than double, the assessed value.

The court below found this to be a fact and on appeal to the Supreme Court of Pennsylvania, Mr. Justice Shaffer, delivering the opinion (302 Pa. 179 at p. 182), said:

> "None of the appellants has shown that its or his property in the market is not worth double the assessment fixed by the county commissioners and court below. Since they fixed fifty per cent of market value as they conceived it to be, appellants without showing a less value for their properties have no standing to complain."

Upon the whole record respondents submit that the motion to dismiss and quash the writs of certiorari in each of these seven cases should prevail and the writs of certiorari dismissed, or on the merits the judgment of the Court of Common Pleas of Greene County and the Supreme Court of Pennsylvania should be affirmed.

CHALLEN W. WAYCHOFF,

A. A. PURMAN,

AMBROSE BRADLEY,

Counsel for Respondents.

Dated at Waynesburg, Pa.

IV.

APPENDIX.

Determining the place of the assessment of coal and minerals underlying seated lands where divided by county, township or borough lines.

Act of April 27, 1903, P. L. 362 (*Purdon's Digest,* 13 ed. vol. 4, page 4630. West. Stat. 1920, sec. 20600, page 2005).

> "That from and after the passage of this act, the assessors of the townships and boroughs of the several counties of this Commonwealth shall, where seated lands, underlaid with coal, are divided by county, township or borough lines, the ownership of which coal has been severed from the ownership of the overlying strata or surface, assess each division of said coal in the county, township or borough in which it actually lies."

SUPREME COURT OF THE UNITED STATES.

Nos. 7, 8, 9, 10, 11, 12 and 13.—October Term, 1931.

7	Cumberland Coal Company, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	On Writs of Certiorari to the Supreme Court of the State of Pennsylvania.
8	Cumberland Coal Company, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	
9	Cumberland Coal Company, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	
10	Cumberland Coal Company, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	
11	Henry A. Phillips, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	
12	Piedmont Coal Company, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	
13	Greene County Coal Company, Petitioner, *vs.* Board of Revision of Tax Assessments in Greene County, Pennsylvania.	

[November 23, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

These seven cases were heard together in the state court and decided in a single opinion, as they were deemed to present but one question. They relate to assessments for taxation of the coal lands

of the petitioners, for the year 1928, in several townships of Greene County, Pennsylvania. Taking as typical the assessment of coal lands in the township of Cumberland, it appears that petitioners, on appeal to the Court of Common Pleas of Greene County, assailed the plan of assessment adopted by the Commissioners of the County sitting as a Board of Appeal for the Revision and Equalization of Assessments. Petitioners alleged that the valuation placed upon their coal was unjust and discriminatory, as the Commissioners had "assessed all coal in the same township (except what is termed 'active coal') at the same valuation, regardless of the remoteness or accessibility of the said coal to market, cost of operation, or means of transportation and regardless of the difference in value and without due regard to the valuation and assessment of other coal and other classes of real estate in the County of Greene." The Court of Common Pleas, on findings of fact and conclusions of law, dismissed the appeals, and the decrees were affirmed by the Supreme Court of the State. 302 Pa. 179. The specific contention that the plan of assessment violated the equal protection clause of the Fourteenth Amendment was presented by petition for reargument and was considered and was explicitly overruled by the Supreme Court. As the state court entertained and decided the Federal question, this Court has jurisdiction. Jud. Code, sec. 237 (b); U. S. C., Tit. 28, sec. 344. *Leigh* v. *Green*, 193 U S. 79, 85; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *Illinois Central R. R. Co.* v. *Kentucky*, 218 U. S. 551, 556; *Fleming* v. *Fleming*, 264 U. S. 29, 31.

There is no question that the assessments under review were made pursuant to a deliberately adopted system. The case is not one of mere errors in judgment in following a proper method (*Sunday Lake Iron Company* v. *Wakefield*, 247 U. S. 350, 352, 353; *Southern Railway Company* v. *Watts*, 260 U. S. 519, 526), but one where the challenged discrimination resulted from a plan of assessment which was none the less systematic and intentional because of belief in its validity. *Raymond* v. *Chicago Union Traction Company*, 207 U. S. 20, 35, 37; *Sioux City Bridge Company* v. *Dakota County*, 260 U. S 441, 445; *Chicago Great Western Railway Company* v. *Kendall*, 266 U. S. 94, 98, 99.

From the facts as found by the Court of Common Pleas, it appears that the petitioners' property in question is virgin coal (as

distinguished from 'active coal', that is, coal which 'is opened and mined'[1]) and is part of the Pittsburgh or river vein. That is a continuous vein of bituminous coal underlying the whole of Greene County and is 'practically of the same character, quality and thickness.' Greene County is bounded on the east by the Monongahela River, and the Pittsburgh or river vein extends westerly for several miles through a number of townships. The coal immediately along the river front, by reason of proximity to rail and river transportation, is more valuable than the 'back coal', and the value of the coal decreases with the distance from the river. Within a distance of about three miles westerly from the river, mining operations are being conducted. In making the triennial assessments for the taxation of property *ad valorem,* the Commissioners adopted as a uniform basis for all property fifty per cent. of the amount taken as actual value. The Commissioners then assigned different values for the coal in the different townships of the county, but assessed the coal within the same township at the same value an acre notwithstanding differences in actual or market value due to distances from transportation facilities and to other factors.

Cumberland Township adjoins the Monongahela River and extends westerly about nine miles. All the coal in the Pittsburgh or river vein within the limits of this township, except what was described as 'active coal',[2] was assessed by the Commissioners (on the fifty per cent. basis) at $260 an acre, despite the fact that the coal along the river, and for a considerable area (much more than 250 acres[3]) around the operating plants, was worth $1,000 an acre.

The petitioner, Cumberland Coal Company, owns 64,574 acres of the Pittsburgh or river vein of coal within Greene County, of which 9,237 acres lie in Cumberland Township and consists (with the exception of two small, detached tracts not here involved) of a block of coal extending from a point distant 2¼ miles westerly from the Monongahela River to the western boundary of the township. With respect to the difference in actual value of that peti-

[1]The court found that "where the coal is opened and mined", the Commissioners "have assessed one hundred acres as active coal, and if the amount of coal mined exceeds seventy-five acres for the year 1927 they have increased the acreage of the active coal to two hundred fifty acres".

[2]'Active coal' was assessed at $500 an acre.

[3]See Note 1, *supra.*

tioner's coal, distant from the river, as compared with coal of the same sort belonging to other owners and more favorably located, the Court of Common Pleas expressly found as follows:

"The Pittsburgh or River vein of coal of appellant" (petitioner here) "lying a distance of three miles west of the Monongahela River and extending back a distance of three miles, or six miles from the river, does not possess a value of more than one-half of the value of the same vein of coal fronting on the Monongahela River, belonging to others than appellant, and extending back a distance of three miles westwardly".

In attempted justification of the discrimination, the Court of Common Pleas adverted to the fact that other owners of coal in this vein were also assessed for 'active coal' and for buildings, equipment and real estate constituting 'operating properties'. But such assessments appear to have been made for items in a different class of properties, and the complaint of the petitioner is not with respect to such items, but as to the discrimination in the assessment of coal of the same character and description within the township (that is, exclusive of active coal and operating properties) which was assessed at the same figure of $260 an acre throughout the township notwithstanding the great differences in actual value according to location.

It is not necessary to deal with disparities in the assessments of coal in the same vein in other townships of Greene County, as these assessments present essentially the same question. Nor is it necessary to enlarge upon the facts, as the Supreme Court of the State made no question as to these and dealt specifically with the question of law which they raise. That question was defined and answered by the Supreme Court in its opinion, as follows:

"Appellants' counsel state their position thus: Township assessors and county commissioners sitting as a board of revision may not assess all bituminous coal in the Pittsburgh or river vein within the territorial limits of a township at the same value, disregarding differences in actual or market values by reason of great differences of distance from the river or rail transportation and other factors entering into values where it is undisputed that the actual or market value of the coal varies throughout the township and that the coal fronting on the river and railroads possesses a value twice that of the coal lying back from the river and extending to a distance of nine or ten miles. Our answer must be that they may so assess it, and the courts may not alter individual assessments, provided they do not fix the value at a figure in each instance greater than the fair market value of

each owner's property, or, as in the cases before us, higher than the percentage of value, here fifty per cent. uniformly fixed throughout the county.

"None of the appellants has shown that its or his property in the market is not worth double the assessment fixed by the county commissioners and court below. Since they fixed fifty per cent. of market value as they conceived it to be, appellants without showing a less value for their properties, have no standing to complain. . . .

". . . The fifty per cent. ratio throughout the county having been uniformly fixed and appellants not having shown that their assessments as made are in excess of fifty per cent. of the fair market values of their property, have no standing to complain, it matters not what other assessments of other properties not before us may be." 302 Pa. at pp. 182-184.

And, on the petition for reargument, presenting the Federal question, the Supreme Court, modifying its first order denying the petition, said, upon consideration, that the Court was "of opinion that the plan of assessment in these cases does not violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

We are unable to agree with this view. It is established that the intentional, systematic undervaluation by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed upon the full value of his property. *Sunday Lake Iron Company* v. *Wakefield, supra; Sioux City Bridge Company* v. *Dakota County, supra; Raymond* v. *Chicago Union Traction Company, supra; Chicago Great Western Railway Company* v. *Kendall, supra.* In *Sioux City Bridge Company* v. *Dakota County, supra* (at p. 446), this Court, referring to the dilemma presented by a case where one or a few of a class of taxpayers are assessed at one hundred per cent. of the value of their property pursuant to statutory requirement and the rest of the class are intentionally assessed at a lower percentage, stated the rule to be as follows: "This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent. of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

In applying this principle, the fact that a uniform percentage of assigned values is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, a system is deliberately adopted which ignores differences in actual values so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as, for example, an acre) as the property of other owners which has an actual value admittedly higher. Applying the same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a different ratio to actual values when the latter are the same. If the Commissioners, in the instant case, had taken the basis of one hundred per cent. instead of fifty per cent. of the assigned values, but had adopted the same method of assessment by which all the coal in a township (aside from active coal) was assessed at the same value an acre, despite well known and important differences in value, the result would have been an undervaluation of similar coal belonging to other owners, which would have brought the case of the petitioners within the principle of the decisions cited. In such case, if the petitioners' property had been valued at one hundred per cent. of its actual value, the like property of the other owners, having a higher actual value, would in effect have been valued at less than one hundred per cent. The discrimination is essentially the same, and is equally repugnant to constitutional right, when both assessments are made on the basis of fifty per cent. of assigned values and differences in actual values are deliberately and systematically disregarded. The undervalued property is in effect valued at less than fifty per cent. of its actual value; for example, coal of the same description worth twice as much as that of the Cumberland Coal Company was really valued at twenty-five per cent. of its actual value.

The petitioners are entitled to a readjustment of the assessments of their coal so as to put these assessments upon a basis of equality, with due regard to differences in actual value, with other assessments of the coal of the same class within the tax district.

The decrees are reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

It is so ordered.